82-2026

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No. _____

JOSEPH H. WESTON ..... *Petitioner*

vs.

SEVEN JUSTICES OF THE
SUPREME COURT OF ARKANSAS ET AL ..... *Respondents*

ON PETITION FOR WRIT OF CERTIORARI
TO THE 8TH CIRCUIT COURT OF APPEALS

JOSEPH H. WESTON
P.O. BOX 84
CAVE CITY, ARKANSAS 72521
Pro se

GENERAL PRESS SERVICES

QUESTIONS FOR REVIEW
On 44th Arkansas Amendment

1a. Is the 44th Amendment to the Constitution of the State of Arkansas unconstitutional when measured by the Constitution of the United States?

b. AMENDMENT No. 44 (Interposition)

Section 1. From and after the Adoption of this Amendment, the General Assembly of the State of Arkansas shall take appropriate action and pass laws opposing in every Constitutional manner the un-Constitutional desegregation decisions of May 17, 1954 and May 31, 1955 of the United States Supreme Court, including interposing the sovereignty of the State of Arkansas to the end of nullification of these and all deliberate, palpable and dangerous invasions of or encroachments upon rights and powers not delegated to the United States nor prohibited to the States by the Constitution of the United States and Amendments thereto, and those rights and powers reserved in the States and to the People thereof by any department, commission, officer, or employee of such department or commission of the Government of the United States, or of any government of any Nation or Federation of Nations acting upon the apparent authority granted them by or assumed by them from the Government of the United States. Said opposition shall continue steadfast until such time as such un-Constitutional invasions or encroachments shall have abated or shall have been rectified, or the same shall be transformed into an Amendment to the Constitution of the United States and adopted by action of three-fourths of the States as provided therein.

Sec. 2. The General Assembly shall enact laws to insure the administration and enforcement of the spirit and letter of this Amendment; and shall appropriate adequate funds to effect the same, including a proportionate share of such expenses as may be necessary for the maintenance of regional committees created among the States for the preservation of rights belonging to the states and the people thereof.

Sec. 3. The General Assembly shall enact such laws under the Police Powers reserved to the States as may be necessary to regulate health, morals, education, marriage, good order and to insure the domestic tranquility of the citizens of the State of Arkansas.

Sec. 4. No public official or employee of the State of Arkansas or of any political subdivision thereof shall have immunity from arrest, prosecution and trial for the violation of such penal laws as the General Assembly shall provide for the willful failure and refusal to carry out the clear mandates of this Amendment; and in addition to the penalties provided for by the General Assembly, shall automatically forfeit his or her office.

Sec. 5. All parts of the Constitution of the State of Arkansas in conflict with this Amendment be, and the same are, hereby repealed.

Proposed by Initiative Petition filed in the office of the Secretary of State on the 3rd day of July, 1956. Voted on at the General Election November 6, 1956. Returns: For, 185,374; against, 146,064.

c. Has the State of Arkansas withdrawn or seceded from the jurisdiction of the United States Supreme Court? And the laws of Congress?

d. Does the Supreme Court have the power to protect its own jurisdiction from this enactment that has been in effect for 27 years and has injured thousands of citizens and residents of Arkansas, including this Petitioner, by refusing to recognize the existence of rights of national citizenship or to protect them in the state courts?

e. Does Sec. 4 of the 44th Arkansas Amendment establish and maintain an official state policy of Racism by commanding its officials — on pain of losing their jobs — to nullify all Acts of Congress that guarantee Civil Rights to all people?

f. Does Sec. 5 of the 44th Arkansas Amendment repeal all sections of the State Constitution that offer protection of national citizenship, including freedom of the press, freedom of religion, freedom of speech?

2a. Has a majority of the Supreme Court of Arkansas, for 27 years under authority of the 44th Amendment, maintained an enemy alien government within the borders of the State of Arkansas?

b. Was enactment of the 44th Amendment tantamount to the Declaration of War upon the United States, in a manner similar to the Nullification Acts of 1832, and subsequent nullification acts, that led to the Civil War?

3a. Inasmuch as the 44th Amendment commands all Arkansas officials to conspire and act to deny the rights of federal citizenship to Editor Weston, and to all other people in Arkansas; and to practice an official policy of Racism, does it automatically provide in writing, in documentary form of the highest power of the State of Arkansas, a concession that:

b. The Plaintiff in this cause has shown a *prima facie* case of Invidious Animus *Commanded by the State* in all parts of this cause?

c. And has shown a *prima facie* case that the *State of Arkansas has Commanded*, in violation of 42 USC 1985 (2) and (3), and of 42 USC 1986, consummated conspiracies throughout this cause?

d. And that Weston has established a *prima facie* case of action, under Color of Law by the State of Arkansas, itself, and all its officials and others shown herein to be acting in concert with them in violation of 42 USC 1983?

QUESTIONS CONCERNING STATUTE OF LIMITATIONS

1. Did Judge Overton err in his September 30, 1981 Order, in agreement and in conspiracy with defendants,that Plaintiff Weston had failed to comply with the Arkansas 3 year limit of limitations statute?

2. In his November 10, 1980 Order, Judge Overton, in conformity with Local Rule No. 8 of District Court, gave Plaintiff and *indefinite* time in which to file his complaint, after the complaint he had filed October 23, 1980 had been rejected.

3. When Weston returned to court July 17, 1981 in good faith, with his Amended Complaint and the required money for filing fee, Judge Overton *accepted* both the money, and the Amended Complaint which was properly filed that date.

Did he err by failing to comply with the Appellate Court's opinion in the July 7, 1982 Remand?

Did he err by entering such an obfuscating Order as that of November 1, 1982, and was it done for the purpose of hindering, blocking, or interfering with the true course of justice in a federal court? (See Page A6 of Appendix)

And did Judge Overton refuse to accept the responsibility of a federal court to promote the cause of justice by refusing to properly resort to use of a federal precedent?

Johnson v. *Railway Express Agency, Inc.* (1975) 421 U.S. 454, 44 L. Ed. 2d 295, 95 S. Ct. 1716.

"Considerations of state law may be displaced where their application would be inconsistent with the federal policy underlying the cause of action under consideration."

Edgerton v. *Puckett* (1975, WD Va.) 391 F. Suppl. 463.

". . . federal courts are not to apply state limitation statutes in 1983 actions when they unreasonably restrict what was intended by Congress to be a broad federal remedy or amount to unconstitutional burdens on the assertion of federal statutory rights."

QUESTIONS FOR REVIEW ON DISTRICT COURT ORDER OF SEPT. 30, 1981

1. Did the U.S. District Court for Eastern Arkansas (The Honorable William R. Overton) err by denying Plaintiff

Joseph H. Weston an Impartial Tribunal and Due Process of Law in the following actions and inactions in his September 30, 1981 Order?

a. Failure to hold a hearing?

b. Failure to hold a pre-trial conference of attorneys?

c. Failure to inquire if any out-of-court agreements had been made?

d. Failure to convoke a 3-judge court; and failure to seek any other proper *Federal* judicial help on Plaintiff's challenge of the constitutionality of the 44th Amendment to the Constitution of the State of Arkansas?

e. By totally ignoring the subject of the 44th Amendment?

"There is a federal constitutional right to be tried only by an impartial tribunal and this right can be protected in a Sec. 1983 action."

Tumey v. *Ohio* (1927) U.S. 510, 71 L. Ed. 749, 47 S. Ct. 437, 5 Ohio L. Abs. 159, 5 Ohio L. Ab. 185, 50 ALR 1243.

2a. Did Judge Overton err in holding that Weston had no constitutional rights in which he was injured in actions taken by state defendants and others cooperating with them in proceedings of the Independence County Grand Jury that ended its session on November 19, 1977?

b. And in holding that Weston's protected consti-

tutional rights had not been violated by the majority opinion of the State Supreme Court on February 12, 1979?

c. And by presuming that he had exonerated officials of the Mormon Church who had participated in the October-November conspiracy of the Independence County Grand Jury reign of terror, by his unsupported proclamation that they "were not even acting under color of law"?

3. Inasmuch as this case was filed under authority of 42 USC 1983, 1985 (2) and (3) and 1986, did Judge Overton violate the doctrine of the Supreme Court as shown in *Haines* v. *Kerner* by dismissing this case in his September 30, 1981 Order?

"The Supreme Court has indicated that a motion to dismiss in a 1983 action is not to be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

Haines v. *Kerner* (1972) 404 U.S. 519, 30 L. Ed. 2d 652, 92 S. Ct. 594, 596, rehearing denied, 405 U.S. 948, 30 L. Ed. 819, 92 S. Ct. 963.

4a. Did Judge Overton err by holding that Supreme Court Justices Byrd, Smith, Holt, Hickman, Matthews, Wootton; State Circuit Court Judges Dudley, Ponder and Taylor; and Prosecutor Leroy Blankenship; and the State of Arkansas had *absolute immunity*?

b. In view of the fact that Weston also had filed this suit under authority of 1985(2), (3) and 1986, all conspiratorial actions of the judges, prosecutor, and state of Arkansas are deemed to be criminal violations of 1985(2) and 1985(3).

c. And inasmuch as the state in open court has conceded the guilt of all the parties named in sub-paragraph (a) above;

d. And inasmuch as the State of Arkansas had admitted in pleadings that lay before Judge Overton that the actions of all judges, and of Prosecutor Blankenship were taken as *official actions of the State of Arkansas;*

e. Are Judges Byrd, Smith, Holt, Hickman, Dudley, Matthews, Wootton, Ponder and Taylor and the State of Arkansas, and Independence County, Arkansas, liable to civil suit for torts by Weston and possible direct prosecution for crimes committed in violation of 1985(2), 1985(3), and 1986?

f. When deemed guilty of a crime under 1985(2),1985(3), and 1986, public officials and the State of Arkansas have absolutely no immunity whatever from criminal or civil court actions for damages.

g. The Supreme Court has held that judges and other officials are not immune when deemed to be guilty of criminal action.

". . . whatever may be the case with respect to civil liability generally, or civil liability for wilful corruption, we have never held that the performance of the duties of judicial, legislative, or executive officers requires or contemplates the immunization of otherwise criminal deprivations of constitutional rights. On the contrary, the judicially fashioned doctrine of official immunity does not reach so far as to immunize criminal conduct proscribed by an Act of Congress."

O'Shea v. *Littleton* (1974) 414 U.S. 488, 38 L. Ed. 2d 674, 94 S. Ct. 669.

5a. Did Judge Overton fail to comprehend the seriousness of the showing and proving of conspiracies to injure Plaintiff Weston and to block, hinder, and negate his efforts to seek protection and vindication in the courts of Arkansas?

b. In its April 4, 1983 decision in *Kush, et al* vs *Rutledge*, The United States Supreme Court re-stated the purpose and scope of 42 USC 1985(2) and 1985(3), and placed emphasis upon their origin as part of the Civil Rights Act of April 9, 1866, entitled "An Act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication."

c. Pertinent parts of that decision follow . . . "or shall conspire together for the purpose of in any manner impeding, hindering, obstructing, or defeating the due course of justice in any State or Territory, with intent to deny to any citizen of the United States the due and equal protection of the laws, or to injure any person for lawfully enforcing the right of any person or class of persons to the equal protection of the laws, . . ."

d. The penalties for such conspiracy also were re-emphasized in the *Kush et al* v. *Rutledge* case as follows:

". . . each and every person so offending shall be deemed guilty of a high crime, and upon conviction thereof in any district or circuit court of the United States or district or supreme court of any Territory of the United States having jurisdiction of similar offenses, shall be punished by a fine not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, as the court may determine, for a period of not less than six months, nor more

than six years, as the court may determine, or by both such fine and imprisonment as the court shall determine. And if any one or more persons engaged in any such conspiracy shall do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby any person shall be injured in his person or property, or deprived of having and exercising any right or privilege of citizenship of the United Sta'es, the person so injured or deprived of such rights and privileges may have and maintain an action for the recovery of damages occasioned by such injury or deprivation of rights and privileges against any one or more of the persons engaged in such conspiracy such action to be prosecuted in the proper district or circuit court of the United States, with, and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts under the provisions of the Act of April 9, 1866, entitled "An Act to protect all persons in the United States in their civil rights, and to furnish the means for their vindication."

6a. Did Judge Overton, in the September 30, 1981 Order, err by holding that inasmuch as the State of Arkansas had not given permission for the filing of suit the State was immune, under authority of the 11th Amendment, to such suit?

b. Plaintiff had clearly shown, as early as the Amended Complaint, (Court ran of Original Files entry of 7/17/81) that 42 USC 1896 applies at this point.

"Since the constitutional bases for 1896 are found in the implementing clauses of the Thirteenth, Fourteenth, and Fifteenth Amendments, states are *not* to be immunized from responsibility in suits brought under this section.

c. Sec. 282, Antieau, Federal Civil Rights Act, 1980, Edition, Citing: Cf. *Fitzpatrick* v. *Bitzer*, (1976) 427 U.S. 445, 49 L. Ed. 2d 614, 96 S. Ct. 2666.

7a. Did Judge Overton on September 30, 1981 err in holding that "Defendants Bachman, Brokaw, Hall, Hill, Harkey, Mellor, McChesney, Wilkinson, and the Church of Jesus Christ of Latter-Day Saints were not even acting under color of State Law?"

"Private individuals are subject to 1983 actions when they are wilful participants in joint activity with the State or its servants."

Stambler v. *Dillon* (1969 S.D. N.Y.) 302 F. Supp. 1250; *Stypmann* v. *San Francisco* (1977 CA 9 Cal.) 557 F. 2d 1338:

". . .when there is a concert of action between state officials and private individuals."

Canty v. *Richmond, Virginia Police Dept.* (1974, ED Va.) 383 F. Supp. 1396, affirmed without opinion (CA 4 Va.) 526 F. 2d 587, cert. denied 423 U.S. 1062, 46 L. Ed. 2d 654, 96 S. Ct. 802.

8a. Did Judge Overton err by granting *all* the motions to dismiss of *all* defendants?

b. Common sense and the good old "Law of Averages" are against the district court on this one.

c. Surely, the learned district judge and the equally learned defendants: State Supreme Court Justices Byrd, Smith, Holt, Hickman, Dudley, Matthews, Wootton, and State

Circuit Court Judges Ponder and Taylor, and all other defendants, must have worked together in conspiracy and concert, as defined by 1985(2), 1985(3) to defy the jurisdiction of the U.S. Supreme Court, to put down that Court and the Civil Rights laws of Congress, in order to punish Plaintiff Weston for having dared to assert his constitutional rights and the constitutional rights of all other persons to the protection afforded by national citizenship in the United States?

An examination of the pleadings of the defendants in both district and appellate courts shows a clear and consistent pattern of conformity to the 44th Arkansas Constitutional Amendment;

And an examination of Judge Overton's Order clearly shows that he upheld and affirmed the attacks of the defendants upon the jurisdiction ofthe U.S. Supreme Court, and upon the peace and safety of all citizens and residents of the United States, as well.

And the September 30, 1981 Order of Judge Overton as judge of the U.S. District Court for Eastern Arkansas is an overt act, as oneof the conspirators, that confirms their conspiracy and deems them all to be guilty of violation of Petitioner Joseph H. Weston's rights of national citizenship, as shown in his allegations and pleadings in this cause under authority of 42 USC 1983, 1985(2), 1985(3), and 1986; with jurisdiction bestowed by 28 USC 1331, 1332, 1343 and of further jurisdiction, as explained in Petitioner's section on jurisdiction in this petition.

It should be noted that all defendants herein knew of this conspiracy and took a fiendish delight in putting down Editor

Weston. If any of the state officials had publicly spoken out against it they could have prevented consummation of the conspiracy, or at least the consummation of their own part of it.

Therefore, the State of Arkansas is deemed fully guilty of violation of 1983, 1985(2), 1985(3) and 1986.

QUESTIONS CONCERNING GRAND JURY AND SUPREME COURT

Are the Mormon Church defendants Mellor, McChesney, Cobb, and Wilkinson deemed guilty of a *consummated* conspiracy under 42 USC 1985(2), and possibly also under 1985(3), with Prosecutor Blankenship and Judge Ponder to time their activities in excommunication of Weston from the Mormon Church to coincide with the November 1977 session of the Independence County Grand Jury, for the purpose of impeaching Weston in daily sessions of the Grand Jury, which concluded November 19, 1977?

The Grand Jury on that date delivered a fraudulent "True Bill" that was arrived at by use of a suborned witness, Charles Patterson, who was ordered by Judge Ponder to testify against Weston. Patterson, a former State Liquor Control Board officer, was himself already under 23 counts of indictment from the same Grand Jury.

Judge Ponder was himself without proper jurisdiction by reason of not having acted upon a proper Motion for Recusal that had been before him for several weeks. Did Judge Robert Dudley, who properly held jurisdiction under appointment of the state's Chief Justice, consummate a conspiracy on

November 19, 1977, in conspiracy with Ponder, abandoning his responsibility to Weston, had vacated his jurisdiction in the case, on November 19, and had arranged for Ponder to unlawfully resume jurisdiction for the purpose of injury to Weston. (See Page 9 et sequitur in Amended Complaint, Courtran 7/17/81)

Questions: Did Prosecutor Blankenship, Judge Dudley, Forewoman Veda Gordon of the Grand Jury itself, the Independence County Quorum Court, whose members had willingly and knowingly voted extra secret funds to pay expenses of the prosecutor; Mormon Church officials Mellor, McChesney, Cobb and Wilkinson; *all conspire together under* 42 USC 1985(2) and 1985(3) to hinder, obstruct, block, and divert the due course of justice in a state court of Arkansas for the purpose and intent of injury to Weston in body and property?

(Weston was immediately re-arrested at his home in Sharp County, thrown back into jail, in Independence County, and bonded for $4,000 cash bond, which he couldn't pay, and, it being a weekend, it took three days to make arrangements for payment of a $400.00 cash premium that was taken from his wife's grocery money, in hardship.

Did the act of Judge Dudley constitute a neglect of judicial duty? And malicious manipulation of Due Process? And denial of an impartial tribunal? And, of course, a criminal act under 1985(2) and (3) of the Civil Rights Law of April 9, 1866?

Did the actions of Blankenship, Forewoman Gordon, and Judge Ponder in suborning the Grand Jury by ordering

Charles Patterson, over the objections of his attorney, the Honorable Steve Engstrom, who was present in court, to testify against Weston — constitute a *consummated* conspiracy under 1985(2) and also 1985(3), to block, interfere with and divert the true course of justice in the State of Arkansas for the purpose of injuring the body and property of Editor Joseph H. Weston, who had, for five years consistently used his weekly newspaper, to enforce or attempt to enforce, the civil rights of all people in Arkansas?

And did Lawyer John Norman Harkey participate in this conspiracy by filing two lawsuits against Weston for damages alleging libel, during the actual deliberations of the Grand Jury, for the obvious purpose of influencing and suborning the deliberations of the Grand Jury?

And by sending threatening letters and making threatening telephone calls to Weston's printers and newspaper vendors in many parts of Arkansas, also participate in the Grand Jury conspiracy that resulted in the permanent suppression of the *Sharp Citizen*, and the denial of Weston's rights of Freedom of the Press, Freedom of Speech, Freedom from False Arrest and False Imprisonment, Freedom from Excessive Bond; the right to an Impartial Tribunal, the right of any citizen to Due Process of Law, and many other associated civil rights?

And were Harkey's clients in these fraudulent lawsuits, Ann Bachman; Nancy Brokaw; Jean Hill; and Jackie Hall; fellow conspirators with Harkey and the Grand Jury in their 1985(2) and 1985(3) actions?

Were the Arkansas officials of the Church of Jesus Christ of Latter Day Saints Mellor, McChesney, Cobb, and Wil-

kinson, all fellow conspirators in the Grand Jury conspiracy, and was their part of the conspiracy consummated with their excommunication of Weston on June 12, 1978, a few days before Weston was to go on criminal trial for five counts of perjury, which, if he were convicted, could have sent him to notorious Cummins farm for 50 years and have stripped his family of their home and all possessions with a $50,000.00 fine?

Did the following members of the Arkansas Supreme Court: Justices Smith, Holt, Hickman, Byrd, Special Chief Justice Matthews, and Special Associate Justice Wootton, after a full presentation of all facts, AFFIRM the entire Independence Grand Jury tragedy, in their delivery of their majority opinion of February 12, 1979?

And did this make them full participants in the Grand Jury conspiracy, consummated many times over, to suppress Editor Weston's newspaper, the *Sharp Citizen*?

And did the handing down of the decision of Special Chief Justice Stephen A. Matthews on Feb. 12, 1979, constitute the consummation of their own conspiracy among Justices Smith, Holt, Hickman, Byrd, Matthews and Wootton — to abrogate the lawful order of Justice George Howard, Jr., delivered from the bench on May 21, 1978, which had affirmed the official opinion of the then Attorney General of Arkansas, Bill Clinton, that "Judge Ponder might well have erred" — and to substitute, in its place, the absurd opinion of Chief Justice Matthews?

And were the Matthews decision, and many other actions in this cause, taken in conformity with the 44th Amendment to the Constitution of Arkansas?

Bill Clinton is now Governor of Arkansas and Justice Howard is now a District Court Judge for the U.S. District Court for Eastern Arkansas.

QUESTIONS FOR REVIEW CONCERNING THE INDEPENDENCE COUNTY GRAND JURY

1. Was Joseph H. Weston injured in his constitutional rights of national citizenship by the activities of the Independence County Grand Jury that culminated in a trial before State Circuit Judge Andrew G. Ponder on Nov. 19, 1977, at Batesville, Arkansas?

2. Reference is made to Weston's Amended Complaint Item #7/17/81 of Courtran in the Original Files.

3. Did Judges Ponder and Dudley, Prosecutor Leroy Blankenship, Grand Jury Forewoman Veda Gordon, Independence County, a political subdivision of Arkansas, the state of Arkansas itself, John Norman Harkey, Ann Bachman, Nancy Brokaw, Jean Hill, Jackie Hall, R. Ford Wilkinson, Richard W. Cobb, Robert McChesney, J. Lynn Mellor, all conspire to:

a. Suppress his newspaper, the *Sharp Citizen*, in violation of his rights of free press?

b. And was this part of the conspiracy consummated when Lawyer John Norman Harkey sent out goon squad hirelings to threaten vendors who had been selling the *Sharp Citizen* for five years?

c. And by letters written to printers all over Arkansas,

threatening to sue them if they printed any part of Weston's newspaper?

d. And by libel lawsuits against Weston and one of his vendors, filed in time to coincide with sessions of the Grand Jury with sensational newspaper publicity, for the purpose of influencing the Grand Jury? (pages 37, 38, 39, 40, 41, 42, 43, 44 in Original Files entry in Court ran #7/17/81)

e. Did Mellor, Cobb, McChesney and Wilkinson, all state and local officials of the Church of Jesus Christ of Latter-Day Saints, to which Weston belonged, to excommunicate Weston — with much attendant publicity, for the purpose of impeaching Weston in Grand Jury hearings, and further to impeach Weston with his actual excommunication only 11 days before the date established for Weston's criminal trial for five counts of perjury?

And was their part of the conspiracy consummated by the delivery of a copy of Weston's excommunication to Prosecutor Blankenship and Lawyer Harkey?

Reference pages 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 of Item No. 7/17/81 of Court ran in the Original Files.

All of the above material lay before District Judge Overton when he ruled in his Sept. 30, 1981 Order that Weston had no constitutional rights that had been violated in any part of this case.

Does the apposite ecclesiastical case of Mrs. Johnson (page 51 in Court ran 7/17/81) indicate that the LDS (Mormon Church) was following a policy of excommunication for political purposes?

Does the close cooperation between the Mormon defendants herein, in which the subject of religion was clearly used to influence court actions, constitute an infringement by both Church and State upon Weston's rights of Freedom of Religion and Freedom from the Establishment of a State Religion?

The indictments of the Grand Jury were quashed and Judges Ponder and Dudley were reprimanded for "improprieties" in an order of June 26, 1980 in Independence County Circuit Court, thus admitting State guilt in all the Grand Jury operations, including the jailing and bonding of Weston, as noted by Justice Howard in his decision rendered from the bench of the State Supreme Court on May 21, 1978.

Finally, are Ponder, Dudley, Blankenship, Gordon, Mellor, McChesney, Cobb, and Wilkinson, and the Little Rock Stake of the Mormon Church; and Harkey, Bachman, Brokaw, Hall, Hill, all guilty of conspiracy to deny federally protected civil rights to Weston under provisions of 42 USC 1985 (2) as defined by the Supreme Court in *Kush* v. *Rutledge* on April 4, 1983? And therefore, guilty of violating 42 USC 1986, because they obviously knew of the conspiracy, could have stopped it, and failed to do so.

GRAND JURY'S WORK QUASHED

1. On June 26, 1980, after Mr. T. J. Hively, who had been elected Prosecuting Attorney to succeed Blankenship, had refused to prosecute the Grand Jury's indictments, and after the Honorable Bart G. Mullis had presented a motion to dismiss the activities of the Grand Jury and of Judges Dudley

and Ponder they were QUASHED under very damaging implications from this action to Ponder and Dudley and to the entire Grand Jury conspiracy.

In his "Motion" and in his "Brief in Support" of that motion, Mr. Mullis clearly emphasized the improper and biased conduct of Judge Ponder. He quoted the same case, in the state jurisdiction of *Bolden* v. *State*, which Justice Howard had cited in his May 21, 1978 decision on the Grand Jury case in the Arkansas Supreme Court.

Judge Ponder reentered the Independence Grand Jury case AFTER Judge Dudley had been assigned to exclusive jurisdiction of "all matters pertaining to Joseph H. Weston's appearance before the Independence County Grand Jury."

The Order No. 77-117 in the State Supreme Court, was signed by Chief Justice Carlton Harris, and filed in Independence County Circuit Court on October 26, 1977. It could have been nullified only by a subsequent written Order by the Chief Justice.

Judge H. A. Taylor came into this case, in succession to Judge Dudley, by appointment of the Chief Justice on Dec. 14, 1977. A copy of his Order of Assignment is found in the appendix herein.

Judge Taylor's Order of June 26, 1977, in quashing the proceedings of the Grand Jury and of Judges Ponder and Dudley, being an official circuit court action of Arkansas, with

Judge Taylor speaking on behalf of the State of Arkansas for the Record, is therefore the official condemnation of those proceedings in their entirety.

And would it not also be an official concession and confession by the State of Arkansas for itself, and on behalf of all defendants in this case, up to and including the actions on Nov. 19, 1977, that all the defendants therein, including the State, are guilty, as Plaintiff Weston had alleged, of violating 42 USC 1985(2), and 1985(3), and 1986?

Do these defendants, of course, include all those at both the Grand Jury level and the State Supreme Court level, because precisely the same material and the same Plaintiff or Appellant continued throughout both actions?

PENDENT STATE CASE NO. CIV 77-190

1. Was Judge H.A. Taylor absolutely WITHOUT jurisdiction to enter his order of Feb. 4, 1982, in State Circuit Court of Independence County, Ark., by reason of the fact that he was sitting in disobedience to Sec. 20, Article 7 JUDICIAL DEPARTMENT, of the Constitution of the State of Arkansas? which reads:

"Disqualification of Judges — Grounds — No Judge or Justice shall preside in any cause in the event of which he may be interested".

At the time Judge Taylor entered his February 4, 1982 Order, a copy of which is shown in the appendix of this Petition, Judge Taylor was, and still is, and had been since July 7, 1981, a defendant, in this present federal case No. 81-2112, being sued for heavy damages; and the IDENTICAL material upon which he has based his Feb. 4, 1982 Order was,

and is, now before this Court in the Amended Complaint in District Court of Civ 77-199, found on pages 41 et sequitur of Petitioner's Amended Complaint docket entry 7/17/81 of Court ran from District Court.

That lawsuit, attended by large headlines in the *Batesville Guard,* was used by Lawyer Harkey to influence and suborn the Independence County Grand Jury in its October-November deliberations, being filed (and blatantly published) on November 16, 1977, only 3 days before the Grand Jury delivered its suborned indictments of Weston to Judge Ponder.

The entire matter of material and actions of the Grand Jury was quashed on June 26, 1980, in Judge Taylor's own court.

The two other plaintiff parties in State Court Case No. Civ 77-190, Plaintiff Jackie Hall, and her attorney of record, John Norman Harkey, also have been defendants in this federal case since July 17, 1977. (See pages 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 41, 42, 43, 44 of Petitioner's Amended Complaint, Court ran docket entry 7/17/81 in the Original Files.

Thus, the three protagonists in Civ 77-190, and all the materials upon which Taylor's unconstitutional order of Feb. 4, 1982, was based, have all been fully within jurisdiction of the U.S. District Court and the 8th Circuit Court of Appeals since July 17. 1981. (See pages 28 et sequitur, Amended Complaint, Court ran 7/17/77 in Original Files.

In a motion to Judge Taylor PRIOR to the Feb. 4, 1982 order, Weston, who in Civ 77-190 is a defendant, requested that Judge Taylor recuse himself on grounds of conflict with the state constitution in the matter of his own interest in Civ

77-190, and in other violations of due process in state court and federal court.

The motion was denied as shown in Judge Taylor's order itself which is to be found in the appendix hereto.

This pendente state case is fully briefed on pages 25 et sequitur of his appeal on Remand to the Appellate Court filed on January 11, 1983, and in Petitioner's Request for Rehearing by a Panel, timely filed on March 28, 1983.

Was Judge Taylor without proper jurisdiction over either person or material when he entered his Feb. 4, 1982 Order?

Did his sitting in that cause constitute a federal denial of due process?

Was the February 4 Order entered in denial of an impartial tribunal?

Were the concerted actions of Taylor, Harkey, and Hall a conspiracy in violation of 42 USC 1985(2), consummated by the Feb. 4 Order, to injure Weston and his property and to continue the suppression of his newspaper, the *Sharp Citizen*, because it advocated civil rights for all people and a cleanup of official corruption in Arkansas — thus effectively denying Editor Weston's right to freedom of the press?

LIST OF RESPONDENTS

Ann Bachman, Nancy Brokaw, Jean Hill, Jackie Hall, John Norman Harkey, State Circuit Judge Andrew G. Ponder, Leroy Blankenship, attorney; State Circuit Judge H. A.

Taylor; Associate Justice Robert A. Dudley; Veda M. Gordon, foreman of Grand Jury; R. Ford Wilkinson; Dr. Robert McChesney; Dr. J. Lynn Mellor; Independence County; Conley Byrd, former Associate Justice; Associate Justice George Rose Smith; Associate Justice Frank Holt; Associate Justice Darrell Hickman; Former Special Chief Justice Stephen A. Matthews; Former Special Associate Justice Richard H. Wootton; Richard A. Cobb; State of Arkansas; Little Rock, Arkansas, Stake of Jesus Christ of Latter Day Saints.

OTHER INTERESTED PARTIES

1. In ADDITION to defendant parties shown, the following named interested parties are listed and identified as follows:

a. Bill Clinton, Governor of Arkansas, State Capitol, Little Rock, Ark., whose previous actions herein as Attorney General in an appearance in an oral hearing of this matter then in jurisdiction of the Arkansas Supreme Court presented an opinion in favor of Appellant Weston.

b. Governor Clinton also is named as one of the two agents for service upon the State of Arkansas which is a defendant in a first jurisdiction matter of a CONTROVERSY BETWEEN THE UNITED STATES AND A STATE, under Supreme Court 28 USC 1251(b)(2).

c. Steve Clark, presently Attorney General who is by law and Rules of the U.S. Supreme Court an official designated for service in a controversy between the United States and a state, USC 1251(b)(2).

cc. The Solicitor General of the United States.

d. Associate Justice John I. Purtle of the Arkansas Supreme Court, as a friendly interested party and appellee, who rendered a dissenting opinion in favor of Plaintiff Weston in this matter, as shown in the chapter "State Supreme Court", elsewhere in this Petition.

e. Federal District Judge George Howard, Jr., of the Eastern Arkansas District Court of Arkansas, who, in a former identity and jurisdiction as Associate Justice of the Arkansas Supreme Court delivered an order in favor of Editor Weston, also as shown here in a chapter entitled "State Supreme Court". Judge Howard, a black man, cannot personally come forth to protect himself because of judicial ethics.

f. Corporation of the President, Church of Jesus Christ of Latter Day Saints, Salt Lake City, Utah.

g. State Circuit Judge T. J. Hively, who when he was Prosecuting Attorney, refused to prosecute the indictments of the suborned Independence County Grand Jury.

h. Honorable Bart G. Mullis of Pine Bluff, who as counsel for defense of Weston, cooperated to give the Editor a victory in state court.

i. Petitioner feels that former Associate Justices Robert Mays and John Stroud are no longer interested in the outcome of this case, and has dropped their names from the list of Respondents.

j. U.S. District Judge William R. Overton, a hostile appellee.

LIST OF COUNSEL OF RECORD

MR. JOHN NORMAN HARKEY
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216 East Washington, Jonesboro, Ark. 72401

JOSEPH H. WESTON, pro se, petitioner
P.O. Box 84, Cave City, Ark. 72521

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No. _____

JOSEPH H. WESTON ..... *Petitioner*

vs.

SEVEN JUSTICES OF THE
SUPREME COURT OF ARKANSAS ET AL ..... *Respondents*

ON PETITION FOR WRIT OF CERTIORARI
TO THE 8TH CIRCUIT COURT OF APPEALS

JURISDICTION

1. The April 8, 1983 denial of Appellant Weston's timely request for Rehearing by a Panel completes the pattern of total abstention by the 8th Circuit Court of Appeals in appellate cases 81-2112 and 82-2433. A copy of the denial of Rehearing appears in the appendix hereto as the first item.

2. "Inasmuch as this is an action brought under the Civil Rights Act, the power of a federal court to abstain from hearing of claims properly brought before it is a closely restricted one which may be invoked only in a narrowly limited set of special circumstances."

Holmes v. *New York City Housing Authority*, (1968, CA)

398, F. 2d 262. And total abstention by the Court of Appeals, in due process, de facto gives jurisdiction in all parts of this case to the Supreme Court.

3a. Petitioner Joseph H. Weston appeals to this Court for a writ of certiorari to the 8th Circuit Court of Appeals;

b. And/or for a Mandate for Execution and Administration to the Chief Judge of the U.S. District Court for the Eastern District of Arkansas;

c. Or for such direct action by this Court as it might deem necessary or wise;

d. Under authority of:

1. 28 USC 1254 (1) because of that section's plenary accommodation;

2. 28 USC 1251 (b)(2) because this cause embraces a controversy between the United States and the State of Arkansas;

3. And 28 USC 1252, because the State of Arkansas has nullified Acts of Congress, including the Civil Rights Acts under which the 1954 and 1955 Little Rock school desegregation cases were decided by the U.S. Supreme Court, and all subsequent Civil Rights Acts of Congress.

4. Jurisdiction in the lower courts was posited on 28 USC 1343, 1331 and 1332, and is repeated here. (See page 5, Amended Complaint, Court ran 7/17/81.)

4a. Petitioner hereby certifies, to the best of his knowledge and belief, that these questions raised by the 44th Arkansas Amendment, and that Amendment itself, have never been certified to the Supreme Court;

b. And he also certifies to the best of his knowledge and belief, that the same questions, and the 44th Amendment itself, have never before been certified to the Solicitor General of the United States.

c. The Solicitor General has been given special service in this matter, as certified to in Petitioner's Affidavit for Service.

5a. Petitioner respectfully requests that the Supreme Court, in the authority of 28 USC 1254 (3) shall require the entire Record to be sent up for considering the entire matter in controversy, in making its decision on the granting of certiorari or other action.

b. There has never been a hearing on evidence, or of any other sort in this cause.

c. Because of this fact, the Appellate Court required the Original Files to be sent up, and then itself failed to make a decision of any sort on merits.

d. Except for a portion of the Original Files that were sent back to District Court on Remand, the remaining Original Files plus all docket items entered in the Appellate Court remain with the Appellate Court at St. Louis.

Petitioner requests that all records, including those remaining with the District Court, shall be sent up.

STATEMENT OF THE CASE

The petitioner is a white male, aged 71, and a native of Little Rock, Ark., where he was a newspaper reporter between the ages of 13 and 21.

He left the state on August 10, 1932 as a Second Lieutenant on active duty with the Regular Army of the United States. (See envelope of military records that were submitted as a character reference, and one of the Exhibits of Evidence now part of the Original Files from District Court believed to be now in the office of the Clerk of the Court of Appeals)

After an army career that took him to many places throughout the world, he retired because of wartime injuries, and after several years in national journalism in Chicago, Salt Lake City and Washington, D.C. he retired to a homestead farm in the Ozarks, near Cave City, Ark. 72521.

Seeing the shocking condition of the medieval court system and a corrupt government administration that had flourished in the long dictatorial career of Orval Faubus as Governor, he established a weekly newspaper, named the *Sharp Citizen*, that was dedicated to enforcing civil rights for all people and to disclosing governmental and court corruption, which was rampant.

The paper began publication on January 18, 1972, and became an immediate sensation among a population where free speech and freedom of the press had been almost totally suppressed.

Editor Weston was frequently beaten, his cars burned out

with emery dust and his family kept under constant threat of danger or death.

His work became nationally known and he was honored by the prestigious American Society of Newspaper Editors by being invited to speak at their annual convention in Washington, D.C. (See "The Incredible Story of the Sharp Citizen", a book, a copy of which is among the Exhibits of Evidence in the Original Files of this case, available to this Court.)

In October, 1977, two candidates for judgeships who feared they would fail to be elected if the *Sharp Citizen* were allowed to continue its attacks upon them, organized a total "put out" job to suppress his newspaper, send him to certain death at the hands of professional beat-up men at notorious Cummins prison farm, and to take away the homestead farm home of his family of 7, including 5 young children.

They brought Editor Weston before a Grand Jury at Batesville, 17 miles away, in October, 1977, and after suborning the jury, indicted him as a result of a fantastic conspiracy, on Nov. 19, 1977.

The rest of it is unbelievable legal history as this case unfolds in the federal courts.

After the utterly incompetent trial and dismissal in District Court in Little Rock, Weston appealed to the Eighth Circuit Court of Appeals where, for a year and a half, every motion was denied, left and right.

After a year and a half of jockeying back and forth with the district judge, the appellate judges finally released a 100%

abstention job, one of the very rarest things to happen in the federal court system, and which forced Editor Weston to bring it to the Supreme Court as a last resort in his search for meaningful justice.

And there you have it on your doorstep. The only practical way to know what has or hasn't happened in the lower courts is to require that the entire Record be sent up under authority of 28 USC 1254(3) — and my sincere best wishes to all of you.

P.S. And if you have time to pause along the way to read some of those 50 copies of the *Sharp Citizen*, you'll drop right into the middle of some of the most rugged Americana imaginable. That box of *Sharp Citizens* is among the Exhibits of the Original Files, too!

WHAT PETITIONER WANTS

1. That the 44th Amendment to the Constitution of the State of Arkansas shall be declared to be unconstitutional when measured by the Constitution of the United States.

1A. And that the District Court Order of Sept. 30, 1981 shall be vacated.

2. That, as a matter of immediate preliminary relief, the unlawful judgment against Petitioner for $275,000.00 of Feb. 4, 1982 that presently lies in Independence County Circuit Court, at Batesville, Ark., shall be vacated in all its parts, and all issue that has proceeded therefrom, or might proceed from it, shall be quashed.

b. This Judgment was entered by Special Circuit Judge H. A. Taylor in belligerent defiance of the jurisdiction of this Supreme Court.

3. Also, as a matter of urgently needed temporary relief, that Petitioner shall be awarded his costs, including reasonable attorney's fees as part of the costs for the FIVE AND ONE-HALF YEARS HE HAS SPENT IN THIS VERY DIFFICULT CASE AS A FULL TIME ATTORNEY THAT HAS EXCLUDED THE POSSIBILITY OF ANY OTHER EMPLOYMENT.

4. Petitioner requests that because of malice shown in this case, that District Judge William R. Overton shall be permanently removed from any and all jurisdiction over the affairs of Joseph H. Weston.

5. And Petitioner respectfully requests that, after having received the attention of this Court, all items listed herein shall be mandated to Judge G. Thomas Eisele for administration and execution in his capacity as Chief Judge of the U.S. District Court for the Eastern District of Arkansas, at Little Rock.

6. Petitioner recommends that the Supreme Court, for the imperative protection of its own jurisdiction, and the dignity and respectability of the federal courts in Arkansas, that this court shall initiate criminal action against District Judge William R. Overton, as shown by the emphasis upon the Civil Rights Act of April 9, 1866, shown in pages 10 and 11 of this Court's slip opinion in the April 4 decision in the case of *Kush* v. *Rutledge*, with the Judge to be tried in the court of proper jurisdiction in Little Rock.

Frankly, Gentlemen, and Mrs. O'Connor, it's a situation in which the federal court system must regain its own honor and respect.

CONCLUSION

THEREFORE, Plaintiff asks compensatory damages, punitive damages and also nominal damages from each and every one of the defendants, collectively and severally, as noted herein.

1. Ann Bachman, Nancy Brokaw, Jean Hill, Jackie Hall and Veda M. Gordon, $5,000.00 in damages and $20,000.00 in punitive damages from each and every one of them severally, or $125,000.00 total from all of them.

2. From R. Ford Wilkinson alias Randall F. Wilkinson, the sum of $10,000.00 in damages and $40,000.00 in punitive damages, a total of $50,000.00.

3. John Norman Harkey, Judge Andrew G. Ponder, Judge Robert Dudley, Judge H. A. Taylor, Justices Darrell Hickman, Frank Holt, George Rose Smith, and former Justice Conley Byrd, Special Chief Justice Stephen L. Matthews, Special Justice Richard H. Wootton, from each and every one of them, severally $50,000.00 damages and $450,000.00 punitive damages, or a total of $500,000.00 damages from each and every one of them severally or a total of $5,000,000.00 from all of them collectively.

4. J. Lynn Mellor, Richard Cobb, Robert McChesney, $50,000.00 damages and $450,000.00 punitive damages from each and every one of them severally, or $1,500,000.00 from all of them collectively.

e. From Independence County, a political subdivision of the State of Arkansas, the sum of $500,000.00 in damages and $1,000,000.00 in punitive damages, a total of $1,500,000.00.

f. From the Little Rock, Arkansas Stake of the Church of Jesus Christ of Latter Day Saints, or Mormon Church, the sum of $1,000,000.00 in damages and $4,000,000.00 in punitive damages, a total of $5,000,000.00.

g. From the State of Arkansas, $5,000,000.00 in damages and $20,000,000.00 in punitive damages, a total of $25,-000,000.00.

Please note that the state is sued under 1985 and 1986, and has no immunity, and the 11th Amendment does NOT apply, and therefore, there is no federal restriction on paying such damages out of taxes.

h. Or such other monetary relief as the Court may deem just and proper compensation to the Plaintiff, and sufficiently high punitive damages to serve as a deterrent to prevent further violations of Acts of Congress of the United States and criminal contempt of the Constitution of the United States, and attacks upon the jurisdiction of the Supreme Court of the United States.

Respectfully submitted,

JOSEPH H. WESTON
P.O. BOX 84
CAVE CITY, ARKANSAS 72521
Pro se

AFFIDAVIT OF SERVICE

I, Joseph H. Weston, do solemnly swear that I have deposited the following listed items with the Honorable Sloan Wells, Postmaster of Cave City, Arkansas 72521, for mailing on or before the first day of June, 1983:

Required copies of this petition to the Solicitor General of the United States; to Governor Bill Clinton of Arkansas; and Attorney General of Arkansas, Steve Clark; all by first class certified mail; and copies to all counsel of record and all other separately represented parties to this suit, by regular first class mail.

/s/ Joseph H. Weston
JOSEPH H. WESTON, pro se

Subscribed and sworn to before me this 23rd day of May, 1983.

/s/ Patricia A. Parker
Notary Public

My Commission expires: February 25, 1985

APPENDIX

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Nos. 81-2112 and 82-2433 September Term 1982

Joseph H. Weston .....Appellant

vs.

Ann Bachman; Nancy Brokaw; Jean Hill; Jackie Hall; John Norman Harkey; et al Appellees

Appeals from the United States District Court
for the Eastern District of Arkansas

Petition of appellant for rehearing filed in this cause having been considered, it is now here ordered by this Court that the same be, and it is hereby, denied.

April 8, 1983

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION

Joseph H. Weston ..... Plaintiff

vs. No. B C 81-45

Ann Bachman et al .....Defendants

(Filed September 30, 1981)

ORDER

Pending before the Court are several motions to dismiss and an amended motion to dismiss. In each motion, the defendants allege that the Court lacks subject matter jurisdiction and that the plaintiff has failed to state a claim upon which relief can be granted or that the statute of limitations bars this action. Each of the points of the defendants is well taken by the Court.

There are two facts necessary to satisfactorily meet the jurisdictional requirements or to state a claim for relief under 42 U.S.C. §1983, §1985 and §1986. First, plaintiff must establish that he has a right which is protected by federal law or by the Constitution of the United States. Second, he must establish that each defendant deprived him of that constitutional right while acting under color of state law. Plaintiff's second amended complaint sets out six specific instances in which he alleges that his constitutional rights were violated. In one instance, he challenges the right of Ann Bachman, Nancy Brokaw, Jackie Hall, Jean Hill and their lawyer, John Harkey, to bring a state court libel action against him. In another instance, plaintiff challenges the actions of the Little Rock, Arkansas Stake of the Church of Jesus Christ of the Latter Day Saints and its officials, Lynn Mellor, Dr. Robert McChesney, Richard Cobb and Ford Wilkinson in excommunicating him from the church about the same time as a 1977 Independence County grand jury indictment against him. In yet another instance, plaintiff challenges the actions of Judge H. A. Taylor in ordering the plaintiff to answer interrogatories and to deliver himself up for the taking of his deposition in a case which was pending in Judge Taylor's court. Plaintiff also challenges the decision of the justices of the Arkansas Supreme

Court denying him relief from a 1977 Independence County grand jury indictment. Plaintiff challenges the authority of Judge Robert Dudley to hold him in contempt of court for plaintiff's refusal to testify before the Independence County grand jury.

Plaintiff also challenges his 1977 Independence County grand jury indictment which was subsequently quashed and attacks Judge Andrew Ponder, Prosecutor Leroy Blankenship and Foreperson Vera Gordon for their participation in the indictment procedure. Finally, plaintiff names the State of Arkansas, Independence County and Jim Pearson as defendants without making specific allegations as to how they violated his constitutional rights. None of these facts establishes that plaintiff's constitutional rights were violated. Defendants Bachman, Brokaw, Hall, Hill, Harkey, Mellor, McChesney, Wilkinson, Pearson and the Church of the Latter Day Saints were not even acting under color of state law. Furthermore, defendants Mays, Stroud, Byrd, Purtle, Smith, Holt, Hickman, Dudley, Matthews, Wootton, Ponder and Taylor have absolute judicial immunity from damage suits, *Stump* v. *Sparkman,* 435 U.S. 249 (1978); defendant Blankenship was acting within the scope of his duties as prosecuting attorney when he allegedly violated plaintiff's constitutional rights and is, therefore, absolutely immune from suit,*Imbler* v. *Pachtman,* 424 U.S. 409 (1976); the State of Arkansas, which did not consent to this present action by the plaintiff, is also immune from suit brought by one of its citizens under the Eleventh Amendment, *Employees*v. *Missouri Public Health,* 411 U.S. 279 (1973).

Plaintiff's complaint is also barred by the applicable statute of limitations. The statute of limitations for a §1983 suit

which is brought in the state of Arkansas is three years. *Reed* v. *Hutto*, 486 F. 2d 534 (8th Cir. 1973). The conduct of which plaintiff complains stems from a grand jury indictment against him on November 19, 1977. Therefore, plaintiff's filing of this action on May 15, 1981, is not timely.

The motions to dismiss by each of the defendants are granted.

Dated this September 30, 1981.

/s/ William R. Overton
United States District Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

Joseph H. Weston ..... Plaintiff

vs. No. LR M 380

Ann Baughman (Bachman), Nancy Brokaw, Jean Hill, Jackie Hall, John Norman Harkey, Circuit Judge Andrew G. Ponder, Circuit Judge Leroy Blankenship, Circuit Judge H. A. Taylor, Chancellor Robert Dudley, Veda M. Gordon, R. Ford Wilkinson, Dr. J. Lynn Mellor, Dr. Robert McChesney, Independence County, a political subdivision of the State of Arkansas, Honorable Steve Clark, Attorney

General of Arkansas, as respondent for Arkansas Officials .....Defendants

(Filed November 10, 1980)

ORDER

Joseph H. Weston has filed with the Court a "Request for Permission to File En Pauperis" which the Court interprets as a pro se petition to proceed in forma pauperis under 28 U.S.C. §1915(a). From the face of the petition and its reverse side where Mr. Weston has made a number of calculations, it appears that petitioner's family has a tax free monthly income of just over $1,000. He also indicates that he owns a home and eighty acres which he values at $39,000.

Under these circumstances, the Court finds that petitioner is not a pauper and the petition will be denied. Petitioner may file his complaint on payment of the appropriate fees.

It is so ordered this November 10, 1980.

/s/ William R. Overton
United States District Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION

Joseph H. Weston ..... Plaintiff

vs. No. B C 81-45

Ann Bachman et al ..... Defendants

(Filed November 3, 1982)

ORDER

On September 30, 1981, this Court dismissed plaintiff's civil rights action brought under 42U.S C. §§1983, 1985 and 1986. This Court found, among other things, that the complaint was barred by the applicable statute of limitation. Plaintiff's cause of action accrued on November 19, 1977, when he was indicted by an Independence County grand jury. Accordingly, this Court held that plaintiff's complaint, filed May 15, 1981, was barred by Arkansas' three year statute of limitation which ran on November 19, 1980. This Court did not take into consideration that plaintiff had filed a petition to proceed *in forma pauperis* and a complaint on October 22, 1980, which was denied on November 10, 1980. This cause of action is now before the Court on remand from the Eighth Circuit Court of Appeals for determination of the following issues: (1) whether Ark. Stat. Ann. §37-222 or any other Arkansas savings statute, Ark. Stat. Ann. §37-101, *et seq.*, is applicable to plaintiff's action in the circumstances presented in this case; (2) whether, under Arkansas law, the statute of limitations is tolled by filing of a complaint and a motion to proceed *in forma pauperis;* or (3) whether equitable considerations require the paid filing to be related back to the initial *in forma pauperis* filing for statute of limitation purposes.

Arkansas has the following savings statutes:

Ark. Stat. Ann. §37-220, which allows a plaintiff to refile a cause of action against a defendant within one year of his death or the appointment of a representative for his estate if the cause of action survives the deceased.

Ark. Stat. Ann. §37-221, which allows the representative of the estate of deceased plaintiff to refile an abated action within one year of plaintiff's death, if the action survives the plaintiff.

Ark. Stat. Ann. §37-222, which allows a plaintiff who has been granted nonsuit without prejudice, or whose judgment has been arrested or reversed to commence a new action within one year of the non-suit, arrest or reversal of judgment.[1]

Ark. Stat. Ann. §37-226, which permits persons with disabilities, i.e., infants, the insane and those imprisoned out of state, to bring causes of action which accrued during their disability has been removed or dissipated.

Ark. Stat. Ann. §37-227, which permits persons in the armed forces to bring cause of action which accrued while our country was engaged in war within six months of the end of the war.

---

[1]It should be noted that in November, 1977, Mr. Weston brought a §1983 against John Norman Harkey, who is also a defendant in this lawsuit, alleging that Mr. Harkey sent him threatening correspondence. This suit was dismissed without prejudice in September, 1978. The Court does not believe that Mr. Weston's §1983 action against Mr. Harkey is related to the present action. But if there was a connection, Mr. Weston does not come within the purview of Ark. Stat. Ann. §37-222 because this suit was not filed until 2 1/2 years after the 1977 case was dismissed.

> Ark. Stat. Ann. §37-228, which permits persons in the armed forces when our country is at war to bring action for the collection of debts or the recovery of real or personal property within a year and six months of the end of the war, provided that the statute of limitations on these causes of action had not run prior to that person's entry into the armed forces.
>
> Ark. Stat. Ann. §37-229, which tolls the running of the statute of limitations in cases where an action is prevented by some action of the defendant or by his leaving the country.
>
> Ark. Stat. Ann. §37-231, which tolls the running of the statute of limitations in suits by creditors against debtors, who leave the state without the creditors' knowledge, until the creditor becomes appraised of the absconder's whereabouts.

None of these statutes apply to the present case.

The Arkansas courts have not decided the issue of whether the statute of limitations is tolled by the filing and motion to proceed *in forma pauperis* or whether equitable considerations require the paid filing to relate back to the initial *in forma pauperis* filing for statute of limitations purposes. However, a few federal courts have been confronted with those issues and similar issues. Each decision has centered on whether courts should apply literally Rule 3 of the Federal Rules of Civil Procedure, which states that "an action is commenced by filing a complaint in court," or their local rules on commencement of actions. In each case, the courts found that equitable considerations or sound reason compelled them not to adopt a

rigid interpretation of the rules on commencement of actions. For instance, in *Gardner* v. *King*, 464 F. Supp. 666 (W.D.N.C. 1979), the Court held that the receipt of a §1983 complaint and an affidavit in support of *in forma pauperis* status of a *pro se* prisoner was sufficient to "commence" action, so as to toll the statute of limitations, notwithstanding its denial of *in forma pauperis* status. It reasoned that Rule 3 should not be literally applied when extraordinary circumstances exist which justify judicial flexibility. It cited plaintiff's status as a prisoner and a *pro se* applicant and the fact that plaintiff's suit was brought to vindicate important federal principles under statutes that are unequivocably remedial in nature as special considerations which warranted solicitous treatment of plaintiff's case. The Court also conditioned its holding on plaintiff's initial filing, being in good faith, not interposed for dilatory purposes, based on the reasonable expectation that *in forma pauperis* status would be granted and followed by prompt action to continue prosecution of the action after *in forma pauperis* status was denied. It concluded that plaintiff's payment of the requisite filing fee a little over a month after the denial of his *in forma pauperis* status related back to the initial filing of his initial affidavit.

The decision in *Gardner* closely tracks earlier federal cases involving similar issues. In *Mathias* v. *United States*, 391 F. 2d 938, 183 Ct.Cl. 145, *vacated on rehearing on other grounds*, 394 F. 2d 519, 190 Ct. Cl. 925 (4th Cir. 1974), the Court of Claims was faced with the question of whether its local rules, which required that copies be attached to petitions before filing, should be applied literally to a *pro se* inmate seeking to be compensated for an allegedly illegal discharge from the military. The Court found that plaintiff's status as a *pro se* applicant and as a prisoner merited the treatment of his initial

petition as the commencement on the action even though his subsequent petition, which complied with court rules, was time barred. The United States Court of Appeals for the Fourth Circuit took a comparable stance in *Vinson* v. *Richmond Police Department*, 567 F. 2d 263, 264 n.2 (4th Cir. 1977). In that case, the plaintiff filed his §1983 complaint and petition to proceed *in forma pauperis* within the applicable statute of limitations; however, the Court did not enter an order granting plaintiff's petition until after the statute of limitations had run. The Court of Appeals stated that it could not accept the district judge's dismissal of the action on statute of limitation grounds. It found that the more reasonable manner of handling the situation would be to have the approval of application to proceed *in forma pauperis* relate back to the date when plaintiff filed his complaint and application to proceed *in forma pauperis*.

The facts of the present case do not warrant the Court's exercise of judicial flexibility. Although plaintiff was a *pro se* applicant for *in forma pauperis* status, and brought suit under a federal statute which is remedial in nature, he neither exercised good faith in filing his affidavit in support of *in forma pauperis* status, nor did he act promptly in refiling his action after *in forma pauperis* status was denied. *Gardner, supra.* Plaintiff could not have reasonably expected the Court to declare him a pauper when he was receiving $12,000 a year in tax free income and owned a home and eighty acres of land which he valued at $39,000. Furthermore, plaintiff delayed six months after the Court denied his petition to proceed *in forma pauperis* before he refiled his complaint. Under these circumstances, plaintiff's May 15, 1981, complaint should not be allowed to relate back to the *in forma pauperis* petition of October 22, 1980.

Dated this November 2, 1982.

/s/ William R. Overton
United States District Judge

IN THE SUPREME COURT OF ARKANSAS

ORDER CONCERNING
ASSIGNMENT OF JUDGES

No. 77-136

Under the authority vested in the Chief Justice of the Supreme Court of Arkansas by Act 496 of 1965 as amended, Judge H. A. Taylor of the Eleventh Judicial Circuit is hereby assigned to the Third Judicial Circuit to try the cases of:

State vs. Joseph H. Weston
Independence Circuit No. CR-77-133
and
Jackie Hall et al vs. Joseph H. Weston
Independence Circuit No. CIV-77-190

This assignment includes all ancillary proceedings which may arise in connection with said causes and proceedings subsequent thereto. The hearing of said causes and proceedings subsequent thereto shall be held at such time or times as shall be directed and ordered by Judge H. A. Taylor.

The assignment of Judge H. A. Taylor to the Third Judicial Circuit entails only additional duties, and jurisdiction in the Eleventh Judicial Circuit shall remain in Judge

H. A. Taylor to the same extent as though this assignment had not been made.

SPECIAL PROVISIONS: None

This order made and entered this 13th day of December, 1977.

/s/ Carleton Harris
Chief Justice

(Filed December 14, 1977)

IN THE CIRCUIT COURT OF
INDEPENDENCE COUNTY, ARKANSAS

Jackie Hall ..... Plaintiff

vs. No. CIV 77-190

Joseph H. Weston ..... Defendant

JUDGMENT

Now on this 4th day of February, 1982, comes on for hearing the above captioned matter, and the Court, being well and sufficiently advised in the premises, finds from the pleadings, exhibits, testimony and other matters, proof and things, as follows, viz:

1. That the Court has jurisdiction of the parties to and the subject matter of this action.

2. That all of the motions filed by the Defendant up to January 27, 1982, should be and they hereby are denied; that the Defendant's Motion to Quash filed on January 27, 1982 should be and hereby is denied, as well as his Motion to Disqualify the Court from hearing this cause, and further that his Motion for a Continuance filed on February 3, 1982, should be and hereby is denied.

3. The Court further finds that the Defendant libeled the Plaintiff as a result of an article published on September 19, 1977 in a tabloid titled "Sharp Citizen" which is in evidence as Plaintiff's exhibit number one. The Court finds that the Plaintiff has suffered considerable humiliation and embarrassment and injury to her reputation, as well as actual compensatory damages and that she should be granted judgment against the Defendant for this in the amount of Twenty-five Thousand Dollars ($25,000.00).

4. The Court further finds that the Defendant, in publishing the article introduced in evidence, acted wantonly and recklessly and in total disregard for the truth, from which the Court implies that he acted maliciously, and the Court finds that the Plaintiff should be granted punitive damages against the Defendant in the sum of Two Hundred Fifty Thousand Dollars ($250,000.00).

5. The Court further finds that the Defendant was notified many months ago that trial would be held on February 4, 1982, and that a jury was called into Court on February 4, 1982 in order to hear the case should the Defendant appear. The Court finds that the Defndant wrongfully failed to appear without proper or good excuse. The Court therefore finds that the Defendant shall pay all of the costs of the jury, including

mileage, which the Court finds to be in the amount of $460.80 which shall be paid to as part of the costs in this case for the use and benefit of Independence County, Arkansas.

6. The Court further finds that the Plaintiff should recover all of her costs in this action which the Court finds to be in the amount of $35.80.

WHEREFORE, IT IS CONSIDERED, ORDERED AND ADJUDGED that the Plaintiff have judgment of and from the Defendant in the sum of $275,035.80 which shall bear interest until paid at the rate of 10% per annum; that there shall further be judgment for the use and benefit of Independence County, Arkansas, as costs in the amount of $480.80; for all of which execution and other legal process may issue.

/s/ H. A. Taylor
Circuit Judge

(Filed February 22, 1982)

IN THE CIRCUIT COURT OF
INDEPENDENCE COUNTY, ARKANSAS

State of Arkansas ..... *Plaintiff*

vs. No. CR-77-133
CR-77-135
CR-78-149

Joseph Weston ..... *Defendant*

ORDER

On this 26th day of June, 1980, came on for a hearing the defendant's motion to quash the grand jury's indictment, as well as the information herein filed. After a review of the same and the State's response to defendant's motion, it is the judgment of this Court that the motion should be and the same is hereby granted.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED, that the indictment herein filed, as well as the information, should be and the same is hereby quashed.

/s/ H. A. Taylor
Circuit Judge

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No. 82-2026

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

JOSEPH H. WESTON ..... *Petitioner*

vs.

ANN BACHMAN ET AL ..... *Respondents*

ON PETITION FOR
WRIT OF CERTIORARI
TO THE EIGHTH CIRCUIT COURT OF APPEALS

SUPPLEMENTARY INDEX

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GENERAL PRESS SERVICES

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MEMORANDUM NOTING PREVIOUSLY SUBMITTED RELATED ORDERS OF DISTRICT COURT THAT ARE INCLUDED IN APPENDIX OF MAY 31, 1983 PETITION FOR CERTIORARI IN THIS CASE IN THE SUPREME COURT

1. Nov. 10, 1980 order of district court that granted Plaintiff Weston an *indefinite* amount of time in which to file his original complaint that had been rejected previously — found on Page A5 of the Appendix to the May 31, 1983 petition of certiorari in this Court;

2. Judge Overton's Nov. 3, 1982 order in answer to the Appeals Court's July 7, 1982 Remand, found on Page A6 of the Appendix to the May 31, 1983 petition before this Court;

3. Judge Overton's Sept. 30, 1981 order in district court that had dismissed the entire matter in controversy, found on Page A2 of the Appendix to the May 31, 1983 petition in this Court.

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

NO. 81-2112

Joseph H. Weston,	★
	★
Appellant,	★
	★ Appeal from the United
v.	★ States District Court
	★ for the Eastern District
Ann Bachman; Nancy Brokaw;	★ of Arkansas.
Jean Hall; Jackie Hall; John	★
Norman Harkey; Circuit Judge	★
Andrew G. Ponder; Leroy Blank-	★
enship, Attorney; Circuit Judge	★
H. A. Taylor; Robert Dudley,	★
Associate Justice of Arkansas	★
Supreme Court; Veda M. Gordon,	★
Foreman of Grand Jury; R. Ford	★
Wilkinson; Dr. Robert McChesney;	★
Dr. J. Lynn Mellor; Independence	★
County; Attorney General Steve	★
Clark, as respondent to suits against	★
Arkansas; Conley Byrd; George	★
Smith; Frank Holt; Darrell Hick-	★
man; Stephen A. Matthews; Rich-	★
ard H. Wooton; Richard A. Cobb;	★
State of Arkansas; Little Rock,	★
Arkansas, Stake of Church of	★
Jesus Christ of Latter day Saints;	★
John I. Purtle; Richard Mays; and	★
John Stroud,	★
Appellees.	★

Submitted: June 14, 1982

Filed: July 7, 1982

Before HEANEY and ROSS, Circuit Judges, and STEVENS,* District Judge.

*The HONORABLE JOSEPH E. STEVENS, JR., United States District Judge, United States District Court for the Western District of Missouri, sitting by designation.

HEANEY, Circuit Judge.

Joseph H. Weston appeals from a district court order granting the defendants' motions to dismiss his civil rights action brought under 42 U.S.C. §§ 1983, 1985 and 1986. The district court[1] held that the plaintiff failed to establish that his constitutional rights were violated, that certain defendants were not acting under color of state law, that certain defendants were immune from suit and, finally, that the complaint was barred by the applicable statute of limitations. We remand for further proceedings consistent with this opinion.

Section 1983 does not contain its own statute of limitations. Therefore, in determining the proper limitations period in a Section 1983 action, the state statute governing actions most analogous to the civil rights claim is applied. *Garmon* v. *Foust*, 668 F. 2d 400, 402-403 (8th Cir. 1982). The district court correctly determined that Weston's complaint was subject to the three-year limitations period provided by Ark. Stat. Ann. §37-206. See *Clark* v. *Mann*, 562 F. 2d 1104, 1111-1112 (8th Cir. 1977).

Weston filed a request in the district court to proceed *in*

[1]The Honorable William F. Overton, United States District Court Judge for the Eastern District of Arkansas.

forma pauperis on October 22, 1980. A copy of the complaint was attached to the request. The district court denied the request on November 10, 1980. Thereafter, Weston paid the filing fee and refiled his complaint on May 15, 1981. The complaint alleged, in essence, that the defendants conspired against Weston in retaliation for derogatory remarks about Independence County Circuit Judge Andrew Ponder and Leroy Blankenship, a former prosecutor for Independence County, during their campaigns for circuit court judgeships in 1977. Weston contended that conspiracy was effectuated through the misuse of a grand jury to indict him, libel suits against him and his excommunication from the Mormon Church.

The district court determined that the plaintiff's cause of action accrued on November 19, 1977, when he was indicted by an Independence County grand jury. Accordingly, it held that Weston's complaint, filed on May 15, 1981, was barred by Arkansas's three-year statute of limitations which ran on November 19, 1980. The issue before this Court is whether Weston satisfied the statute of limitations by filing within the limitations period on October 22, 1980, his complaint and motion to proceed *in forma pauperis*.

This Court recently held in *Whittle* v. *Wiseman*, No. 81-1935 at 2 (8th Cir. Apr. 16, 1982), that "in applying [Ark. Stat. Ann.] § 37-206 to civil rights actions, we recognize decisions of the Arkansas Supreme Court regarding the applicability of the saving statute to claims subject to the three-year limitation as we have in contexts other than civil rights litigation." In *Whittle*, the plaintiff commenced an action under 42 U.S.C. § 1983, within the three-year statute of limitations. *Id.* at 1-2. The action was subsequently dismissed for failure to prosecute. *Id.* The plaintiff then refiled her suit after the limitations period had run, contending that it was "saved" by Ark. Stat. Ann. § 37-222, which provides that if an action is initiated within the statutory time limit and is dismissed without prejudice, the plaintiff may commence a

new action within one year of the dismissal. *Id.* at 2. This Court remanded the matter to the district court to determine whether Ark. Stat. Ann. § 37-222 "saved" the plaintiffs' section 1983 claim. *Id.* at 2-3.

The district court here did not address the question of whether Weston's *in forma pauperis* application tolled the statute of limitations. Moreover, it issued its order prior to our disposition of *Whittle* v. *Wiseman, supra.* Accordingly, it is appropriate to remand this matter to the district court to determine whether Ark. Stat. Ann. § 37-222, or any of the other Arkansas savings statutes, Ark. Stat. Ann. § 37-101 *et seq.*, are applicable to plaintiff's action in the circumstances presented in this case. Apart from any interpretation of the Arkansas saving statutes, the district court also should determine whether, under Arkansas law, the statute of limitations is tolled by filing a complaint and a motion to proceed *in forma pauperis* or whether equitable considerations require the paid filing to be related back to the initial *in forma pauperis* filing for statute of limitations purposes.

We need not at this time review the district court's alternative holdings that the plaintiff failed to establish that his constitutional rights were violated, that certain defendants were not acting under color of state law and that certain defendants were immune from suit. We retain jurisdiction over these issues and, if necessary, we will review them along with any remaining statute of limitations questions if an appeal is taken from the district court's judgment on remand. Therefore, we vacate the district court's judgment concerning the statute of limitations, and remand for proceedings consistent with this opinion.

A true copy.

Attest:
CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Nos. 81-2112 & 82-2433

Joseph H. Weston, ★
★
Appellant, ★
★ Appeal from the United
v. ★ States District Court
★ for the Eastern District
Ann Bachman; Nancy Brokaw; ★ of Arkansas.
Jean Hall; Jackie Hall; John ★
Norman Harkey; Circuit Judge ★
Andrew G. Ponder; Leroy Blank- ★
enship, Attorney; Circuit Judge ★
H. A. Taylor; Robert Dudley, ★
Associate Justice of Arkansas ★
Supreme Court; Veda M. Gordon, ★
Foreman of Grand Jury; R. Ford ★
Wilkinson; Dr. Robert McChesney; ★
Dr. J. Lynn Mellor; Independence ★
County; Attorney General Steve ★
Clark, as respondent to suits against ★
Arkansas; Conley Byrd; George ★
Smith; Frank Holt; Darrell Hick- ★
man; Stephen A. Matthews; Rich- ★
ard H. Wooton; Richard A. Cobb; ★
State of Arkansas; Little Rock, ★
Arkansas, Stake of Church of ★
Jesus Christ of Latter-day Saints; ★
John I. Purtle; Richard Mays; and ★
John Stroud, ★
Appellees. ★

Submitted: June 14, 1982

Filed: March 15, 1983

Before HEANEY and ROSS, Circuit Judges, and STEVENS,* District Judge.

*The HONORABLE JOSEPH E. STEVENS, JR., United States District Judge, United States District Court for the Western District of Missouri, sitting by designation.

ORDER

This matter is before the Court for a second time. When it was first here, we remanded the matter to the district court with directions to it to reconsider whether the statute of limitations had been tolled. We retained jurisdiction of the matter.

The district court has now considered the matter and has held

> 1) no Ark. Savings Statute, found at Ark. Stat. Ann. §37-101 (1962), *et seq.*, and particularly Ark. Stat. Ann. §37-222 (1962) applied to the circumstances of this case to save the case; 2) that under Arkansas law, the statute of limitations is not tolled by filing of a complaint and a motion to proceed *in forma pauperis;* and 3) that equitable considerations do not require the paid filing to be related back to the initial *in forma pauperis* filing for statute of limitations purposes.

The judgment of the district court is affirmed on the basis of its well-reasoned opinion.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT
4/15/83

Costs taxed in favor of Appellees:

Total costs of Appellees for briefs
for recovery from Appellant: $123.50

Filed April 20, 1983

United States Court of Appeals
For the Eighth Circuit
March 15, 1983

Mr. Joseph H. Weston
Ms. R. B. Friedlander
Mr. Bill W. Bristow
Mr. Oscar W. McConkie
Mr. Richard L. Smith
Mr. David Clark
Mr. John Norman Harkey
Mr. Robert M. McChesney

Re: 81-2112/82-2433-EA Joseph H. Weston v. Ann Bachman, et al

Dear Counsel:

Enclosed is a copy of the order of this Court filed today in the above case. Judgment in accordance with the opinion is also entered today. This order will not be published in accordance with directions received from the Court.

Please consult the appropriate Federal Rules of Appellate Procedure and the Eighth Circuit Rules (15 & 16) for post-opinion procedure, particularly Circuit Rule 16 (d).

Your attention is also directed to Federal Rule of Appellate Procedure 39 and Eighth Circuit Rules 7 (f) and 8 (j). Itemized and verified bills of costs are to be filed in this office with proof of service *within 14 days from this date.* We would appreciate it if counsel for the prevailing party would *promptly* forward to us an itemized bill of costs for the reproduction of the authorized number of copies of their briefs. If the prevailing party fails to submit an itemized bill of costs on a timely basis, this office will assume that the right to

recoup costs has been waived. Itemized bills of costs which are not timely filed will not be processed without a special order of the Court. Similarly, objections to requested bills of costs must also be submitted on a timely basis — within 10 days of the bill of costs.

Your prompt attention to this request will be appreciated.

Sincerely,

/s/ Robert D. St. Vrain
Clerk of Court

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 81-2112.	)	September Term, 1981
	)	
Joseph H. Weston, Appellant,	)	
	)	Appeal from the United
vs.	)	States District Court for the
	)	Eastern District of Arkansas.
Ann Bachman, et al.,	)	
Appellees.	)	
	)	

Opinion of this Court vacating in part judgment of the District Court and remanding the case to the District Court for limited proceedings was filed July 7, 1982. On August 3, 1982, this Court issued mandate herein improvidently.

It is hereby ordered that the mandate of this Court previously issued and assessing costs be rescinded. The Clerk of the District Court is directed to return same to the Clerk of this Court.

Award of costs on appeal will be deferred until further order of the Court.

August 6, 1982

A true copy:

ATTEST:
/s/ Chief Deputy Clerk, U.S. Court of Appeals,
Eighth Circuit

Filed August 9, 1982

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 81-2112 September Term, 1982

Joseph H. Weston, Appellant,

v.

Ann Bachman; Nancy Brokaw, et al., Appellees.

Appeal from the United States District Court for the Eastern District of Arkansas

Appellant's documents entitled "Motion to Present Information for the Court" and "Attorney's Appeal for Action by District Court" have been treated by the court as a petition for writ of mandamus. Said petition is hereby denied.

September 15, 1982

Filed September 20, 1982

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 81-2112	)	September Term, 1982
	)	
Joseph H. Weston,	)	
Appellant,	)	
	)	Appeal from the United States
	)	District Court for the Eastern
	)	District of Arkansas
vs.		
Ann Bachman, et al.,	)	
Appellees.	)	

Appellant's "Motion for Direct Action by Appellate Court in the Matter of State Statutes of Limitations" has been treated by the Court as a petition for writ of mandamus, and same is hereby denied.

September 22, 1982

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 82-2433-EA

Joseph H. Weston, Appellant,	•	
	•	Appeal from the United States
	•	District Court for the Eastern
	•	District of Arkansas
v.	•	
	•	
Ann Bachman, et al., Appellees.	•	

The Court will consider this appeal on the original files of the United States District Court in lieu of the designated record required by Circuit Rule 7. The Clerk of the United States District Court for the Eastern District of Arkansas is requested to forward the original files in case B C 81-45 to this Court.

November 29, 1982

Filed December 1, 1982

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

Nos. 81-2112 and 82-2433	)	
Joseph H. Weston, Appellant,	)	
	)	Appeals from the United States
	)	District Court for the Eastern
	)	District of Arkansas
vs.	)	
	)	
Ann Bachman; Nancy Brokaw; Jean Hill; Jackie Hall; John Norman Harkey, et al, Appellees.	)	

Petition of appellant for rehearing filed in this cause having been considered, it is now here ordered by this Court that the same be, and it is hereby, denied.

April 8, 1983

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

Nos. 81-2112 and 82-2433

Joseph H. Weston, Appellant,	)	
	)	Appeal from the United States
	)	District Court for the Eastern
	)	District of Arkansas
v.	)	
	)	
Ann Bachman, et al., Appellees.	)	

It is now here ordered by the Court that appellees' motion for costs under Eighth Circuit Rule 16 (e) against appellant is denied.

And it is further ordered that appellant's motion to stay mandate pending petition for writ of certiorari is denied.

May 3, 1983

Filed May 5, 1983

CERTIFICATE

In respectfully submitting this Supplemental Appendix, Petitioner certifies that it contains all orders of the 8th Circuit Court of Appeals *that he has received* from and including the July 7, 1982 mandate to and including the denial of mandate pending preparation of a Petition of Certiorari to the Supreme Court, on May 3, 1983.

/s/ Joseph H. Weston
P. O. Box 84
Cave City, Ark. 72521
Telephone (501) 283-5150

Pro Se

AFFIDAVIT OF SERVICE

I, Joseph H. Weston, do solemnly swear and affirm that on this Second Day of July, 1983, I have served by mail three copies to each of the following official counsel of record:

1. a. The Solicitor General of the United States;

b. Honorable Steve Clark, Attorney General of the State of Arkansas, Justice Building, State Capitol, Little Rock, Ark. 72201

2. And have served three copies to each of the following listed private counsel of record:

Mr. John Norman Harkey, P.O. Box 2535, Batesville, Ark. 72501

Mr. David Clark, P.O. Box 2476, Batesville, Ark. 72501;

Mr. Bill W. Bristow, 216 E. Washington St., Jonesboro, Ark. 72401

Mr. Richard L. Smith, Suite 305, 300 Spring Building, Little Rock, Ark. 72201

Mr. Oscar W. McConkey, 330 S. Third East, Salt Lake City, Utah 84111

/s/ Joseph H. Weston,
Pro Se Petitioner

NOTARIZATION

Subscribed to and sworn before me this Second Day of July, 1983. — Patricia A. Parker, Notary Public. My Commission expires February 25, 1985.

No. 82-2026

In the
Supreme Court of the United States

October Term, 1982

Joseph H. Weston — *Petitioner*

V.

Ann Bachman; Nancy Brokaw; Jean Hill; Jackie Hall; John Norman Harkey; Circuit Judge Andrew G. Ponder; Leroy Blankenship; Attorney; Circuit Judge H.A. Taylor; Robert Dudley, Associate Justice of Arkansas Supreme Court; Veda M. Gordon, Foreman of Grand Jury; R. Ford Wilkinson; Dr. Robert McChesney; Dr. J. Lynn Mellor; Independence County; Attorney General Steve Clark, as respondent to suits against Arkansas; Conley Byrd; George Smith; Frank Holt; Darrell Hickman; Stephen A. Matthews; Richard H. Wootton; Richard A. Cobb; State of Arkansas; Little Rock, Arkansas Stake of Church of Jesus Christ of Latter Day Saints; John I. Purtle; Richard Mays; and John Stroud — *Respondents*

ON PETITION FOR WRIT OF CERTIORARI

RESPONDENTS' BRIEF FOR R. FORD WILKINSON; DR. ROBERT McCHESNEY; DR. J. LYNN MELLOR; RICHARD W. COBB; and LITTLE ROCK, ARKANSAS STAKE OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS

RICHARD L. SMITH
Suite 727, Pyramid Place
Little Rock, AR 72201
(501) 372-5745

Attorney for Respondents

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ERRED IN HOLDING a) THAT NO ARKANSAS SAVINGS STATUTE IS APPLICABLE TO PETITIONER WESTON'S ACTION IN THE CIRCUMSTANCES PRESENTED IN THIS CASE; b) THAT UNDER ARKANSAS LAW, THE STATUTE OF LIMITATIONS IS NOT TOLLED BY FILING OF A MOTION TO PROCEED *in forma pauperis;* and c) THAT EQUITABLE CONSIDERATIONS DO NOT REQUIRE THE PAID FILING TO BE RELATED BACK TO THE INITIAL *in forma pauperis* FILING FOR STATUTE OF LIMITATIONS PURPOSES.

II. WHETHER THE DISTRICT COURT ERRED IN HOLDING THAT WESTON FAILED TO ALLEGE THAT HIS CONSTITUTIONAL RIGHTS WERE VIOLATED WITH RESPECT TO CHURCH RESPONDENTS.

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No. 82-2026

In the
Supreme Court of the United States

October Term, 1982

Joseph H. Weston ..... *Petitioner*

V.

Ann Bachman; Nancy Brokaw; Jean Hill; Jackie Hall; John Norman Harkey; Circuit Judge Andrew G. Ponder; Leroy Blankenship, Attorney; Circuit Judge H.A. Taylor; Robert Dudley, Associate Justice of Arkansas Supreme Court; Veda M. Gordon, Foreman of Grand Jury; R. Ford Wilkinson; Dr. Robert McChesney; Dr. J. Lynn Mellor; Independence County; Attorney General Steve Clark, as respondent to suits against Arkansas; Conley Byrd; George Smith; Frank Holt; Darrell Hickman; Stephen A. Matthews; Richard H. Wootton; Richard A. Cobb; State of Arkansas; Little Rock, Arkansas Stake of Church of Jesus Christ of Latter Day Saints; John I. Purtle; Richard Mays; and John Stroud ..... *Respondents*

ON PETITION FOR WRIT OF CERTIORARI

RESPONDENTS' BRIEF FOR R. FORD WILKINSON; DR. ROBERT McCHESNEY; DR. J. LYNN MELLOR; RICHARD W. COBB; and LITTLE ROCK, ARKANSAS STAKE OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS

OPINIONS BELOW

On November 10, 1980, the Honorable William R. Overton of the United States District Court, Eastern District of Arkansas, Western Division, denied Petitioner Weston's "Request for Permission to file in Forma Pauperis." (p. 1, Appendix) *Weston v. Bachman*, No.

LRM380 (D. Ark. Nov. 10, 1980) (Order denying petition to file *in forma pauperis*).

The next order entered was on September 30, 1980, when Judge Overton granted the various motions to dismiss (p. A-2, Appendix) based on lack of subject-matter jurisdiction and because of statute of limitations problems. *Weston v. Bachman*, No. BC81-45 (D. Ark. Sept. 30, 1981) (Order granted defendants motion to dismiss).

On July 7, 1982, the Eighth Circuit Court of Appeals remanded the case to the District Court to reconsider the filing of the motion *in forma pauperis* with respect to its previous decision on the statute of limitations (p. A-4 Appendix) *Weston v. Bachman*, No. BC81-45 (D. Ark. Nov. 2, 1982) (Order remanding the prior ruling that case should be dismissed on statute of limitations grounds).

On March 15, 1983, the Eighth Circuit Court of Appeals affirmed the District Court opinion of November 2, 1982, (p. A-13, Appendix) *Weston v. Bachman*, No. 81-2112, 82-2433 (8th Cir. March 15, 1982) (*aff'd* E.D. Ark.)

The Eighth Circuit Court of Appeals denied the petition for rehearing on April 8, 1983, (p. A-15, Appendix) *Weston v. Bachman*, No. 81-2112 & 82-2433 (8th Cir. April 8, 1983) (denied petition for rehearing).

On May 3, 1983, Weston's motion to stay mandate was denied by the Eighth Circuit Court of Appeals (p. A-16 Appendix) *Weston v. Bachman*, No. 81-2112 & 82-2433 (8th Cir. May 3, 1983) (denied Motion to stay mandate pending petition for Writ of Certiorari).

JURISDICTION

Petitioner correctly cites 28 U.S.C. §1254(1) as the basis for jurisdiction of his petition which provides:

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

However, according to Rule 17 of the Supreme Court Rules, "a review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefore . . . " 28 U.S.C. Supreme Court Rule 17.

This is not a case for such review. Petitioner Weston brought this action alleging violations of his civil rights apparently pursuant to 42 U.S.C. §§1983, 1985, and 1986. In the District Court opinion of September 30, 1981, The Honorable William Overton granted the defendants' various motions to dismiss the case on the grounds that Weston had failed to toll the statute of limitations within the requisite period and that none of the allegations made by Weston were sufficient to show that his constitutional rights were violated. In addition, Judge Overton held that these respondents (namely Wilkinson, McChesney, Mellor, Cobb, and the Mormon Church – hereinafter referred to as Church Respondents) were not even acting under color of state law, one of the prerequisites to establishing proper jurisdictional grounds in such a claim for relief. The remand of the case by the Eighth Circuit back to the District Court was based simply on a statute of limitations question. It is on this basis that Petitioner has petitioned for a Writ of Certiorari and Church Respondents argue that a case which has been dismissed because of failure to meet subject matter jurisdictional grounds and untimely filing on statute of limitations grounds is not a case which is intended to be reviewed under the "special and important" language of Rule 17.

Petitioner's citation of 28 U.S.C. §1251(b)(2) is incorrect. This case does not now, nor has it ever embraced a

controversy between the United States and the State of Arkansas. Petitioner's reliance on the 44th Amendment to the Arkansas Constitution is totally unmerited. His disagreement with this law is totally irrelevant to his case, and Church Respondents respectfully request that this portion of his brief be stricken according to Supreme Court Rule 21.5 and 34.6.

Petitioner's reliance on 28 U.S.C. §1252 is also missplaced in that this case is not on appeal.

Church Respondents respectfully request that for the foregoing reasons the Court deny review on the Writ of Certiorari on jurisdictional grounds.

STATUTORY BASIS OF CASE

Petitioner Weston apparently based his action on 42 U.S.C. §§1983, 1985, and 1986. Since he failed to set out the statutes on which he has based his action they are included here.

"§1983. Civil Action for deprivation of rights.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Contress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

"§1985. Conspiracy to interfere with civil rights."

[See Appendix, p. A-16]

"§1986. Action for neglect to prevent.

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in §1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefore, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

STATEMENT OF THE CASE

On October 22, 1980, Joseph Weston requested permission of the U.S. District Court, Eastern District of Arkansas, Northern Division, to file a complaint alleging violations of his civil rights *in forma pauperis*. On November 10, 1980, the Honorable Judge William Overton entered an order denying the petition. Petitioner Weston then filed his complaint with the requisite filing fee on May 15, 1981, alleging violations of his civil rights apparently pursuant to 42 U.S.C. §§1983, 1985, and 1986. Weston named in his complaint a number of persons, including judges, members of the Arkansas Supreme Court, the Attorney General of Arkansas, the Independence County prosecutor, Arkansas officials of the Church of Jesus Christ of Latter Day Saints, and the Church as well. The Church Respondents, namely R. Ford Wilkinson, Dr. Robert McChesney, Dr. J. Lynn Mellor, Richard W. Cobb, and The Little Rock, Arkansas Stake of the Church of Jesus Christ of Latter Day Saints (along with other defendants) filed motions to dismiss alleging lack of subject-matter jurisdiction. Weston had alleged that Church Respondents had conspired with various other defendants when they excommunicated him from the Mormon Church.

On September 30, 1981, the Honorable Judge William Overton granted defendants' various motions to dismiss, holding that Weston had failed to establish that his constitutional rights were violated, that Church Respondents were not even acting under color of state law, that some defendants were immune from suit, and that the complaint was barred by the statute of limitations.

On appeal July 7, 1982, the Eighth Circuit remanded the case on the issue of statute of limitations, directing the lower court to consider that Weston had filed a request in the District Court to proceed *in forma pauperis* before the statute of limitations had run; a copy of the complaint had been attached to the request. The District Court was

directed to consider whether Weston's *in forma pauperis* application had tolled the statute of limitations. In that opinion, the Eighth Circuit did not review the District Court's alternative holdings, but did retain jurisdiction to review them.

On remand, Judge Overton held on November 2, 1982, 1) that no Arkansas Savings Statute, found at *Ark. Stat. Ann.* §37-101 (1962) *et. seq.*, and particularly *Ark. Stat. Ann.* §37-222 (1962) applied to the circumstances of this case to save the case; 2) that under Arkansas law, the statute of limitations is not tolled by filing of a complaint and a motion to proceed *in forma pauperis;* and 3) that equitable considerations do not require the paid filing to be related back to the intial *in forma pauperis* filing for statute of limitations purposes.

Petitioner Weston appealed the District Court order and the Eighth Circuit affirmed on March 15, 1983.

Weston also petitioned for a rehearing which was denied by the Eighth Circuit on April 8, 1983.

Petitioner Weston filed a petition for Writ of Certiorari in this Court with accompanying brief on or about June 1, 1983.

This Brief is filed by Church Respondents in response to the Petition for Writ of Certiorari and Brief, and the Church Respondents contend that the Eighth Circuit properly affirmed the District Court ruling. The Church Respondents respectfully request that the petition for Writ of Certiorari be denied.

ARGUMENT

1. WHETHER THE DISTRICT COURT ERRED IN HOLDING a) THAT NO ARKANSAS SAVINGS STATUTE IS APPLICABLE TO PETITIONER WESTON'S ACTION IN THE CIRCUMSTANCES PRESENTED IN THIS CASE; b) THAT UNDER ARKANSAS LAW, THE STATUTE OF LIMITATIONS IS NOT TOLLED BY FILING OF A MOTION TO PROCEED *in forma pauperis;* and c) THAT EQUITABLE CONSIDERATIONS DO NOT REQUIRE THE PAID FILING TO BE RELATED BACK TO THE INITIAL *in forma pauperis* FILING FOR STATUTE OF LIMITATIONS PURPOSES.

Arkansas' Savings Statutes, found at *Ark. Stat. Ann.* §37-101 (1962) *et. seq.* are clearly not applicable to the facts and circumstances of the case. Each is very specifically applied to a set of circumstances; for example, *Ark. Stat. Ann.* §37-220 and 221 involve refiling of actions when plaintiff or defendant dies; §37-226 relates to persons with disabilities when the disability is removed; §37-227 and 228 deal with saving causes of actions of persons in the armed forces; §37-229 involves suits when the defendant leaves the county; and §37-231 involves suits by creditors. Petitioner attempted to rely on §27-222 (1962) which provides in pertinent part:

> "If any action shall be commenced within the time respectively prescribed in this act, and the plaintiff therein suffers a non-suit, or after a verdict for him the judgment be arrested, or after judgment for him the same be reversed on appeal or writ of error, such plaintiff may commence a new action one (1) year after such nonsuit suffered or judgment arrested or reversed . . . "

In a recent case in which the statute may have applied, the case was actually dismissed without prejudice for failure to prosecute. *Whittle v. Wiseman*, 683 F.2d 1128 (8th Cir. 1982).

Where there has been no nonsuit, no reversal on appeal, or arrest of judgment, the statute is not applicable. *Hill v. Pipkins*, 72 Ark. 549, 81 S.W. 1216 (1904). Here no nonsuit was ever granted. Petitioner simply filed a request to proceed *in forma pauperis* with complaint attached, and that request was denied. The complaint was properly commenced when Weston made his paid filing on May 15, 1981. Federal Rule of Civil Procedure 3. In order to toll the statute of limitations, the action must be properly commenced. *Wilkins v. Worthen*, 62 Ark. 401, 36 S.W. 21 (1896); *Erwin v. Arkansas Louisiana Gas Co.*, 261 Ark. 537, 550 S.W.2d 174 (1975).

The issue of whether the statute of limitations is tolled by the filing of a motion to proceed *in forma pauperis* or whether equitable considerations require the paid filing to relate back to the initial *in forma pauperis* filing for statute of limitations purposes was one of first impression in the Arkansas Courts. A few other jurisdictions have addressed the issue, and Judge Overton thoroughly reviewed the cases in his opinion of November 2, 1982.

In several of the cases cited, petitioners were prisoners who filed *in forma pauperis* petitions which the court either granted, or found at least to be filed in good faith. *Gardner v. King*, 464 F. Supp. 666 (W.D.N.C. 1979); *Vinson v. Richmond Police Department*, 567 F.2d 263 (4th Cir. 1977); *Move Organization v. City of Philadelphia*, 530 F. Supp. 764 (E.D. Pa. 1982).

Factually, this is simply not a case in which flexibility should be applied. In *Gardner v. King*, supra in which the court did hold that receipt of the *in forma pauperis* motion was sufficient to commence the action so as to toll the statute of limitations, the plaintiff was a prisoner who acted in good faith in filing his motion, and when it was denied, acted promptly to continue prosecution of his case.

In the case at bar, Petitioner Weston has approximately $12,000 per year in untaxed income, and

owns a home and 80 acres of land. He waited 6 months before making a paid filing after his motion was dismissed.

II. WHETHER THE DISTRICT COURT ERRED IN HOLDING THAT WESTON FAILED TO ALLEGE THAT HIS CONSTITUTIONAL RIGHTS WERE VIOLATED WITH RESPECT TO CHURCH RESPONDENTS.

Petitioner Weston has failed to make allegations against Church Respondents which satisfy jurisdictional requirements under 42 U.S.C. §§1983, 1985(2) & (3), and 1986. As Judge Overton stated in his opinion of September 30, 1981, Petitioner must establish 1) that he has a right which is protected by federal law or by the constitution of the United States; and 2) that defendants deprived him of that constitutional right while acting under color of state law. Because of the fundamental separation of church and state, ecclesiastical matters are handled by church tribunals, and legal tribunals must accept such decisions as final and binding on them. *First Presbyterian Church of Schenectady v. United Presbyterian Church in U.S.*, 430 F. Supp. 450 (D.C.N.Y. 1977). Expulsion of a church member is considered a matter of church discipline and church discipline is a matter which does not concern the civil courts. *Parker v. Harper*, 295 Ky. 686, 175 S.W.2d 361 (Ct. App. 1943); *Briscoe v. Williams*, 192 S.W.2d 643 (Mo. Ct. App. 1946); *Hughes v. Killing*, 198 S.W.2d 779 (Tex. Ct. Civ. App. 1946). Some cases have held that civil courts have no jurisdiction to review an act of expulsion. *Briscoe v. Williams*, supra; *Stewart v. Jarrill*, 206 Ga. 855, 59 S.E.2d 368 (1950). When a person becomes a member of a church, he does so voluntarily and he does so on condition of submission to the church's ecclesiastical jurisdiction, no matter how dissatisfied he is with the exercise of that jurisdiction. *Id*, at 370.

Church Respondents are unable to address the "ecclesiastical case of Mrs. Johnson (p. 51 in Courtran 7/17/82)" referred to in Petitioner's Brief because Church

Respondents are unfamiliar with this case, and Petitioner has failed to provide adequate facts or law supporting his contention.

Church Respondents make no attempt to discuss the various aspects of immunity which relate to other respondents in this case.

CONCLUSION

In conclusion, Church Respondents respectfully request that Petitioner's Petition for Writ of Certiorari be denied. For the foregoing reasons this is simply not a case in which special and important reasons exist to grant the petition. Rule 17, Supreme Court Rules.

In summary, Petitioner totally failed to establish jurisdictional grounds under 42 U.S.C. §§1983, 1985(2) & (3), and 1986 with respect to Church Respondents; he failed to meet statute of limitations requirements; and he has been unable to establish a special and important reason to grant his Petition for Writ of Certiorari under Rule 17 of the Supreme Court Rules.

In addition, Petitioner's Brief is burdensome and irrelevant, and does nothing to concisely state the issues or discuss them beyond raising numerous irrelevant questions. Church Respondents respectfully request that Petitioner's Writ of Certiorari be denied on the basis of Supreme Court Rule 21.5 which permits such briefs to be denied solely on that basis.

Respectfully submitted

RICHARD L. SMITH
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Attorney for Respondents

APPENDIX

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JOSEPH H. WESTON — PLAINTIFF

VS. — NO. LR M 380

ANN BAUGHMAN (BACHMAN), NANCY BROKAW, JEAN HILL, JACKIE HALL, JOHN NORMAN HARKEY, CIRCUIT JUDGE ANDREW G. PONDER, CIRCUIT JUDGE LEROY BLANKENSHIP, CIRCUIT JUDGE H.A. TAYLOR, CHANCELLOR ROBERT DUDLEY, VEDA M. GORDON, R. FORD WILKINSON, DR. J. LYNN MELLOR, DR. ROBERT MCCHESNEY, INDEPENDENCE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF ARKANSAS, HONORABLE STEVE CLARK, ATTORNEY GENERAL OF ARKANSAS, AS RESPONDENT FOR ARKANSAS OFFICIALS — DEFENDANTS

ORDER

Joseph H. Weston has filed with the Court a "request for Permission to File En Pauperis" which the Court interprets as a pro se petition to proceed in forma pauperis under 28 U.S.C. §1915(a). From the face of the petition and its reverse side where Mr. Weston has made a number of calculations, it appears that petitioner's family has a tax free monthly income of just over $1,000. He also indicates that he owns a home and eighty acres which he values at $39,000.

Under these circumstances, the Court finds that petitioner is not a pauper and the petition will be denied.

Petitioner may file his complaint on payment of the appropriate fees.

It is so ordered this November 10, 1980.

/s/ William R. Overton
UNITED STATES DISTRICT JUDGE

Filed Nov. 10, 1980

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION

JOSEPH H. WESTON PLAINTIFF

VS. NO. B C 81-45

ANN BACHMAN, ET AL. DEFENDANTS

ORDER

Pending before the Court are several motions to dismiss and an amended motion to dismiss. In each motion, the defendants allege that the Court lacks subject matter jurisdiction and that the plaintiff has failed to state a claim upon which relief can be granted or that the statute of limitations bars this action. Each of the points of the defendants is well taken by the Court.

There are two facts necessary to satisfactorily meet the jurisdictional requirements or to state a claim for relief under 42 U.S.C. §1983, §1985 and §1986. First, plaintiff must establish that he has a right which is protected by federal law or by the Constitution of the United States. Second, he must establish that each defendant deprived him of that constitutional right while acting under color of state law. Plaintiff's second amended complaint sets out six specific instances in which he alleges that his constitutional rights

were violated. In one instance, he challenges the right of Ann Bachman, Nancy Brokaw, Jackie Hall, Jean Hill and their lawyer, John Harkey, to bring a state court libel action against him. In another instance, plaintiff challenges the actions of the Little Rock, Arkansas Stake of the Church of Jesus Christ of the Latter Day Saints and its officials, Lynn Mellor, Dr. Robert McChesney, Richard Cobb and Ford Wilkinson in excommunicating him from the church about the same time as a 1977 Independence County grand jury indictment against him. In yet another instance, plaintiff challenges the actions of Judge H.A. Taylor in ordering the plaintiff to answer interrogatories and to deliver himself up for the taking of his deposition in a case which was pending in Judge Taylor's court. Plaintiff also challenges the decision of the justices of the Arkansas Supreme Court denying him relief from a 1977 Independence County grand jury indictment. Plaintiff challenges the authority of Judge Robert Dudley to hold him in contempt of court for plaintiff's refusal to testify before the Independence County grand jury. Plaintiff also challenges his 1977 Independence County grand jury indictment which was subsequently quashed and attacks Judge Andrew Ponder, Prosecutor Leroy Blankenship and Foreperson Vera Gordon for their participation in the indictment procedure. Finally, plaintiff names the State of Arkansas, Independence County and Jim Pearson as defendants without making specific allegations as to how they violated his constitutional rights. None of these facts establishes that plaintiff's constitutional rights were violated. Defendants Bachman, Brokaw, Hall, Hill, Harkey, Mellor, McChesney, Wilkinson, Pearson and the Church of the Latter Day Saints were not even acting under color of state law. Furthermore, defendants Mays, Stroud, Byrd, Purtle, Smith, Holt, Hickman, Dudley, Matthews, Wootton, Ponder and Taylor have absolute judicial immunity from damage suits, *Stump v. Sparkman*, 435 U.S. 249 (1978); defendant Blankenship was acting within the scope of his duties as prosecuting attorney when he allegedly violated plaintiff's constitutional rights and is, therefore, absolutely immune from suit, *Imbler v.*

Pachtman, 424 U.S. 409 (1976); the State of Arkansas, which did not consent to this present action by the plaintiff, is also immune from suit brought by one of its citizens under the Eleventh Amendment. *Employees v. Missouri Public Health*, 411 U.S. 279 (1973).

Plaintiff's complaint is also barred by the applicable statute of limitations. The statute of limitations for a §1983 suit which is brought in the state of Arkansas is three years. *Reed v. Hutto*, 486 F.2d 534 (8th Cir. 1973). The conduct of which plaintiff complains stems from a grand jury indictment against him on November 19, 1977. Therefore, plaintiff's filing of this action on May 15, 1981, is not timely.

The motions to dismiss by each of the defendants are granted.

Dated this September 30, 1981.

/s/ William R. Overton
UNITED STATES DISTRICT JUDGE

Filed Sept. 30, 1981

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 81-2112

Joseph H. Weston,	*	
	*	
Appellant,	*	
	*	Appeal from the United
v.	*	States District Court
	*	for the Eastern District
Ann Bachman; Nancy Brokaw; Jean Hall; Jackie Hall; John Norman	*	of Arkansas.
	*	

Harkey; Circuit Judge Andrew G. Ponder; Leroy Blankenship, Attorney; Circuit Judge H.A. Taylor; Robert Dudley, Associate Justice of Arkansas Supreme Court; Veda M. Gordon, Foreman of Grand Jury; R. Ford Wilkinson; Dr. Robert McChesney; Dr. J. Lynn Mellor; Independence County; Attorney General Steve Clark, as respondent to suits against Arkansas; Conley Byrd; George Smith; Frank Holt; Darrell Hickman; Stephen A. Matthews; Richard H. Wootton; Richard A. Cobb; State of Arkansas; Little Rock, Arkansas, Stake of Church of Jesus Christ of Latter-day Saints; John I. Purtle; Richard Mays; and John Stroud,

Appellees.

Submitted: June 14, 1982

Filed: July 7, 1982

Before HEANEY and ROSS, Circuit Judges, and STEVENS,* District Judge.

HEANEY, Circuit Judge.

Joseph H. Weston appeals from a district court order granting the defendants' motions to dismiss his civil rights

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*The HONORABLE JOSEPH E. STEVENS, JR., United States District Judge, United States District Court for the Western District of Missouri, sitting by designation.

action brought under 42 U.S.C. §§1983, 1985 and 1986. The district court [1] held that the plaintiff failed to establish that his constitutional rights were violated, that certain defendants were not acting under color of state law, that certain defendants were immune from suit and, finally, that the complaint was barred by the applicable statute of limitations. We remand for further proceedings consistent with this opinion.

Section 1983 does not contain its own statute of limitations. Therefore, in determining the proper limitations period in a section 1983 action, the state statute governing actions most analogous to the civil rights claim is applied. *Carmon v. Foust*, 668 F.2d 400, 402-403 (8th Cir. 1982). The district court correctly determined that Weston's complaint was subject to the three-year limitations period provided by Ark. Stat. Ann. §37-206. *See Clark v. Mann*, 562 F.2d 1104, 1111-1112 (8th Cir. 1977).

Weston filed a request in the district court to proceed *in forma pauperis* on October 22, 1980. A copy of the complaint was attached to the request. The district court denied the request on November 10, 1980. Thereafter, Weston paid the filing fee and refiled his complaint on May 15, 1981. The complaint alleged, in essence, that the defendants conspired against Weston in retaliation for derogatory remarks about Independence County Circuit Judge Andrew Ponder and Leroy Blankenship, a former prosecutor for Independence County, during their campaigns for circuit court judgeships in 1977. Weston contended that conspiracy was effectuated through the misuse of a grand jury to indict him, libel suits against him and his excommunication from the Mormon Church.

1
The Honorable William F. Overton, United States District Court Judge for the Eastern District of Arkansas.

The district court determined that the plaintiff's cause of action accrued on November 19, 1977, when he was indicted by an Independence County grand jury. Accordingly, it held that Weston's complaint, filed on May 15, 1981, was barred by Arkansas's three-year statute of limitations which ran on November 19, 1980. The issue before this Court is whether Weston satisfied the statute of limitations by filing within the limitations period on October 22, 1980, his complaint and motion to proceed *in forma pauperis*.

This Court recently held in *Whittle v. Wiseman*, No. 81-1935 at 2 (8th Cir. Apr. 16, 1982), that "in applying [Ark. Stat. Ann.] §37-206 to civil rights actions, we recognize decisions of the Arkansas Supreme Court regarding the applicability of the saving statute to claims subject to the three-year limitation as we have in contexts other than civil rights litigation." In *Whittle*, the plaintiff commenced an action under 42 U.S.C. §1983, within the three-year statute of limitations. *Id.* at 1-2. The action was subsequently dismissed for failure to prosecute. *Id.* The plaintiff then refiled her suit after the limitations period had run, contending that it was "saved" by Ark. Stat. Ann. §37-222, which provides that if an action is initiated within the statutory time limit and is dismissed without prejudice, the plaintiff may commence a new action within one year of the dismissal. *Id.* at 2. This Court remanded the matter to the district court to determine whether Ark. Stat. Ann. §37-222 "saved" the plaintiffs' section 1983 claim. *Id.* at 2-3.

The district court here did not address the question of whether Weston's *in forma pauperis* application tolled the statute of limitations. Moreover, it issued its order prior to our disposition of *Whittle v. Wiseman, supra*. Accordingly, it is appropriate to remand this matter to the district court to determine whether Ark. Stat. Ann. §37-222, or any of the other Arkansas savings statutes, Ark. Stat. Ann. §37-101 *et seq.*, are applicable to plaintiff's action in the circumstances presented in this case. Apart from any interpretation of the

Arkansas saving statutes, the district court also should determine whether, under Arkansas law, the statute of limitations is tolled by filing a complaint and a motion to proceed *in forma pauperis* or whether equitable considerations require the paid filing to be related back to the initial *in forma pauperis* filing for statute of limitations purposes.

We need not at this time review the district court's alternative holdings that the plaintiff failed to establish that his constitutional rights were violated, that certain defendants were not acting under color of state law and that certain defendants were immune from suit. We retain jurisdiction over these issues and, if necessary, we will review them along with any remaining statute of limitations questions if an appeal is taken from the district court's judgment on remand. Therefore, we vacate the district court's judgment concerning the statute of limitations, and remand for proceedings consistent with this opinion.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION

JOSEPH H. WESTON PLAINTIFF

VS. NO. B C 81 45

ANN BACHMAN, ET AL. DEFENDANTS

ORDER

On September 30, 1981, this Court dismissed plaintiff's civil rights action brought under 42 U.S.C. §§1983, 1985 and

1986. This Court found, among other things, that the complaint was barred by the applicable statute of limitation. Plaintiff's cause of action accrued on November 19, 1977, when he was indicted by an Independence County grand jury. Accordingly, this Court held that plaintiff's complaint, filed May 15, 1981, was barred by Arkansas' three year statute of limitation which ran on November 19, 1980. This Court did not take into consideration that plaintiff had filed a petition to proceed *in forma pauperis* and a complaint on October 22, 1980, which was denied on November 10, 1980. This cause of action is now before the Court on remand from the Eighth Circuit Court of Appeals for determination of the following issues: (1) whether Ark. Stat. Ann. §37-222 or any other Arkansas savings statute, Ark. Stat. Ann. §37-101, *et seq.*, is applicable to plaintiff's action in the circumstances presented in this case; (2) whether, under Arkansas law, the statute of limitations is tolled by filing of a complaint and a motion to proceed *in forma pauperis;* or (3) whether equitable considerations require the paid filing to be related back to the initial *in forma pauperis* filing for statute of limitation purposes.

Arkansas has the following savings statutes:

> Ark. Stat. Ann. 37-220, which allows a plaintiff to refile a cause of action against a defendant within one year of his death or the appointment of a representative for his estate if the cause of action survives the deceased.
>
> Ark. Stat. Ann. §37-221, which allows the representative of the estate of deceased plaintiff to refile an abated action within one year of plaintiff's death, if the action survives the plaintiff.
>
> Ark. Stat. Ann. §37-222, which allows a plaintiff who has been granted nonsuit without prejudice, or whose judgment has been arrested or reversed to commence a

new action within one year of the nonsuit, arrest or reversal of judgment. [1]

Ark. Stat. Ann. §37-226, which permits persons with disabilities, i.e., infants, the insane and those imprisoned out of state, to bring causes of action which accrued during their disability within three years after their disability has been removed or dissipated.

Ark. Stat. Ann. §37-227, which permits persons in the armed forces to bring cause of action which accrued while our country was engaged in war within six months of the end of the war.

Ark. Stat. Ann. §37-228, which permits persons in the armed forces when our country is at war to bring action for the collection of debts or the recovery of real or personal property within a year and six months of the end of the war, provided that the statute of limitations on these causes of action had not run prior to that person's entry into the armed forces.

Ark. Stat. Ann. §37-229, which tolls the running of the statute of limitations in cases where an action is prevented by some action of the defendant or by his leaving the country.

Ark. Stat. Ann. §37-231, which tolls the running of the statute of limitations in suits by creditors against debtors, who leave the state without the creditors' knowledge, until the creditor becomes appraised of the absconder's whereabouts.

None of these statutes apply to the present case.

1

It should be noted that in November, 1977, Mr. Weston brought a §1983 against John Norman Harkey, who is also a defendant in this lawsuit, alleging that Mr. Harkey sent him threatening correspondence. This suit was dismissed without prejudice in September, 1978. The Court does not believe that Mr. Weston's §1983 action against Mr. Harkey is related to the present action. But if there was a connection, Mr. Weston does not come within the purview of Ark. Stat. Ann. §37-222 because this suit was not filed until 2½ years after the 1977 case was dismissed.

The Arkansas courts have not decided the issue of whether the statute of limitations is tolled by the filing and motion to proceed *in forma pauperis* or whether equitable considerations require the paid filing to relate back to the initial *in forma pauperis* filing for statute of limitations purposes. However, a few federal courts have been confronted with those issues and similar issues. Each decision has centered on whether courts should apply literally Rule 3 of the Federal Rules of Civil Procedure, which states that "an action is commenced by filing a complaint in court," or their local rules on commencement of actions. In each case, the courts found that equitable considerations or sound reason compelled them not to adopt a rigid interpretation of the rules on commencement of actions. For instance, in *Gardner v. King*, 464 F. Supp. 666 (W.D.N.C. 1979), the Court held that the receipt of a §1983 complaint and an affidavit in support of *in forma pauperis* status of a *pro se* prisoner was sufficient to "commence" action, so as to toll the statute of limitations, notwithstanding its denial of *in forma pauperis* status. It reasoned that Rule 3 should not be literally applied when extraordinary circumstances exist which justify judicial flexibility. It cited plaintiff's status as a prisoner and a *pro se* applicant and the fact that plaintiff's suit was brought to vindicate important federal principles under statutes that are unequivocably remedial in nature as special considerations which warranted solicitous treatment of plaintiff's case. The Court also conditioned its holding on plaintiff's initial filing, being in good faith, not interposed for dilatory purposes, based on the reasonable expectation that *in forma pauperis* status would be granted and followed by prompt action to continue prosecution of the action after *in forma pauperis* status was denied. It concluded that plaintiff's payment of the requisite filing fee a little over a month after the denial of his *in forma pauperis* status related back to the initial filing of his initial affidavit.

The decision in *Gardner* closely tracks earlier federal cases involving similar issues. In *Mathias v. United States*, 391 F.2d 938, 183 Ct. Cl. 145, *vacated on rehearing on other grounds*, 394 F.2d 519, 190 Ct. Cl. 925 (4th Cir. 1974),

the Court of Claims was faced with the question of whether its local rules, which required that copies be attached to petitions before filing, should be applied literally to a *pro se* inmate seeking to be compensated for an allegedly illegal discharge from the military. The Court found that plaintiff's status as a *pro se* applicant and as a prisoner merited the treatment of his initial petition as the commencement on the action even though his subsequent petition, which complied with court rules, was time barred. The United States Court of Appeals for the Fourth Circuit took a comparable stance in *Vinson v. Richmond Police Department*, 567 F.2d 263, 264 n.2 (4th Cir. 1977). In that case, the plaintiff filed his §1983 complaint and petition to proceed *in forma pauperis* within the applicable statute of limitations; however, the Court did not enter an order granting plaintiff's petition until after the statute of limitations had run. The Court of Appeals stated that it could not accept the district judge's dismissal of the action on statute of limitation grounds. It found that the more reasonable manner of handling the situation would be to have the approval of application to proceed *in forma pauperis* relate back to the date when plaintiff filed his complaint and application to proceed *in forma pauperis*.

The facts of the present case do not warrant the Court's exercise of judicial flexibility. Although plaintiff was a *pro se* applicant for *in forma pauperis* status, and brought suit under a federal statute which is remedial in nature, he neither exercised good faith in filing his affidavit in support of *in forma pauperis* status, nor did he act promptly in refiling his action after *in forma pauperis* status was denied. *Gardner, supra.* Plaintiff could not have reasonably expected the Court to declare him a pauper when he was receiving $12,000 a year in tax free income and owned a home and eighty acres of land which he valued at $39,000. Furthermore, plaintiff delayed six months after the Court denied his petition to proceed *in forma pauperis* before he refiled his complaint. Under these circumstances, plaintiff's May 15, 1981, complaint should not be allowed to

relate back to the *in forma pauperis* petition of October 22, 1980.

Dated this November 2, 1982.

/s/ William R. Overton
UNITED STATES DISTRICT JUDGE

Filed 11-3-82

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 81-2112 & 82-2433

Joseph H. Weston,	*	
	*	
Appellant,	*	
	*	Appeal from the United
v.	*	States District Court
	*	for the Eastern District
Ann Bachman; Nancy Brokaw; Jean	*	of Missouri.
Hall; Jackie Hall; John Norman	*	
Harkey; Circuit Judge Andrew G.	*	
Ponder; Leroy Blankenship,	*	
Attorney; Circuit Judge H.A.	*	
Taylor; Robert Dudley, Associate	*	
Justice of Arkansas Supreme Court;	*	
Veda M. Gordon, Foreman of Grand	*	
Jury; R. Ford Wilkinson; Dr.	*	
Robert McChesney; Dr. J. Lynn	*	
Mellor; Independence County;	*	
Attorney General Steve Clark, as	*	
respondent to suits against	*	
Arkansas; Conley Byrd; George	*	
Smith; Frank Holt; Darrell	*	
Hickman; Stephen A. Matthews;	*	

Richard H. Wootton; Richard A. Cobb; State of Arkansas; Little Rock, Arkansas, Stake of Church of Jesus Christ of Latter-day Saints; John I. Purtle; Richard Mays; and John Stroud,

Appellees.

Submitted: June 14, 1982

Filed: March 15, 1983

Before HEANEY and ROSS, Circuit Judges, and STEVENS,* District Judge.

ORDER

This matter is before the Court for a second time. When it was first here, we remanded the matter to the district court with directions to it to reconsider whether the statute of limitations had been tolled. We retained jurisdiction of the matter.

The district court has now considered the matter and has held

> 1) no Ark. Savings Statute, found at *Ark. Stat. Ann.* §37-101 (1962) *et seq.*, and particularly *Ark. Stat. Ann.* §37-222 (1962) applied to the circumstances of this case to save the case; 2) that under Arkansas law, the statute of limitations is not tolled by filing of a complaint and a motion to proceed *in forma pauperis;* and 3) that equitable considerations do not require the paid filing to be related back to the initial *in forma pauperis* filing for statute of limitations purposes.

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*The HONORABLE JOSEPH E. STEVENS, JR., United States District Judge, United States District Court for the Western District of Missouri, sitting by designation.

The judgment of the district court is affirmed on the basis of its well-reasoned opinion.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 81-2112 and 82-2433	September Term 1982
Joseph H. Weston,	
Appellant,	
vs.	Appeals from the United States District Court for the Eastern District of Arkansas
Ann Bachman; Nancy Brokaw; Jean Hill; Jackie Hall; John Norman Harkey; et al,	
Appellees.	

Petition of appellant for rehearing filed in this cause having been considered, it is now here ordered by this Court that the same be, and it is hereby, denied.

April 8, 1983

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 81-2112 and 82-2433 September Term, 1982

Joseph H. Weston,
Appellant,

vs.

Ann Bachman, et al.,
Appellees.

Appeals from the United States District Court for the Eastern District of Arkansas.

It is now here ordered by the Court that appellees' motion for costs under Eighth Circuit Rule 16(e) against appellant is denied.

And it is further ordered that appellant's motion to stay mandate pending petition for writ of certiorari is denied.

May 3, 1983

CIVIL RIGHTS

§1985. Conspiracy to interfere with civil rights

Preventing officer from performing duties

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any offfice, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of

the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Obstructing justice; intimidating party, witness, or juror

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any state or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat,

any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

R.S. §1980.